

In the Matter of:

CDK Global & Reynolds and Reynolds

September 19, 2019

Robert Brockman

Vol. 2

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For The Record, Inc.

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<p>1 FEDERAL TRADE COMMISSION</p> <p>2</p> <p>3 In the Matter of:)</p> <p>4 CDK GLOBAL,)</p> <p>5 a corporation,) File No.</p> <p>6 And) 171-0056</p> <p>7 REYNOLDS AND REYNOLDS,)</p> <p>8 a corporation.</p> <p>9</p> <p>10</p> <p>11 Thursday, September 19, 2019</p> <p>12</p> <p>13 Sheppard, Mullin, Richter & Hampton, LLC</p> <p>14 2099 Pennsylvania Avenue, N.W.</p> <p>15 Washington, D.C. 20006</p> <p>16</p> <p>17 The above-entitled matter came on for</p> <p>18 investigational hearing, pursuant to notice, at 9:05</p> <p>19 a.m., for the testimony of:</p> <p>20</p> <p>21 ROBERT BROCKMAN</p> <p>22</p> <p>23</p> <p>24</p> <p>25 Reported by: Deborah Wehr, RPR</p>	<p>1 I N D E X</p> <p>2</p> <p>3 EXAMINATION BY: PAGE</p> <p>4 Mr. Abrahamsen 113</p> <p>5</p> <p>6</p> <p>7 EXHIBIT DESCRIPTION PAGE</p> <p>8 CX 1143 7/2/14 e-mail 114</p> <p>9 CX 4036 7/14/14 e-mail 125</p> <p>10 CX 4037 9/11/14 e-mail 130</p> <p>11 CX 4273 Settlement agreement 136</p> <p>12 CX 4152 3PA agreement 144</p> <p>13 CX 4153 Reynolds Interface Agreement 144</p> <p>14 CX 4045 Data Exchange Agreement 144</p> <p>15 CX 4176 2/26/15 e-mail 155</p> <p>16 CX 4182 CDK Deal Information 167</p> <p>17 CX 4038 3/19/15 e-mail 180</p> <p>18 CX 4459 11/21/16 e-mail 185</p> <p>19 CX 4420 11/2016 e-mail 188</p> <p>20 CX 4463 8/1/17 e-mail 192</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 APPEARANCES:</p> <p>2</p> <p>3 ON BEHALF OF THE FEDERAL TRADE COMMISSION:</p> <p>4 DANA F. ABRAHAMSEN, ESQUIRE</p> <p>5 WILLIAM LANNING, ESQUIRE</p> <p>6 MICHAEL WILLIAMS, ECONOMIST</p> <p>7 Federal Trade Commission</p> <p>8 600 Pennsylvania Avenue, N.W.</p> <p>9 Washington, D.C. 20580</p> <p>10 (202) 326-3695</p> <p>11 dabrahamsen@ftc.gov</p> <p>12</p> <p>13 ON BEHALF OF REYNOLDS & REYNOLDS:</p> <p>14 MICHAEL P.A. COHEN, ESQUIRE</p> <p>15 AMAR NAIK, ESQUIRE</p> <p>16 Sheppard, Mullin, Richter & Hampton, LLC</p> <p>17 2099 Pennsylvania Avenue, N.W.</p> <p>18 Suite 100</p> <p>19 Washington, D.C. 20006</p> <p>20 (202) 747-1958</p> <p>21 mcohen@sheppardmullin.com</p> <p>22</p> <p>23 ALSO PRESENT:</p> <p>24 SCOTT CHERRY</p> <p>25 JON EMMANUAL</p>	<p>1 P R O C E E D I N G S</p> <p>2 - - - - -</p> <p>3 MR. ABRAHAMSEN: We will resume today our</p> <p>4 examination of Mr. Brockman. We have as counsel for</p> <p>5 the Federal Trade Commission, William Lanning. And</p> <p>6 Mr. Ansaldo, who was with us yesterday, is not present</p> <p>7 today. But otherwise the attendance in the room is the</p> <p>8 same as yesterday. And we are back on the record.</p> <p>9 Whereupon --</p> <p>10 ROBERT BROCKMAN,</p> <p>11 a witness, called for examination, having been</p> <p>12 previously duly sworn, was examined and testified as</p> <p>13 follows:</p> <p>14 EXAMINATION</p> <p>15 BY MR. ABRAHAMSEN:</p> <p>16 Q. Mr. Brockman, good morning.</p> <p>17 A. Good morning.</p> <p>18 Q. I remind you, you are still under oath.</p> <p>19 A. I understand.</p> <p>20 Q. We were talking yesterday about the different</p> <p>21 approaches Reynolds had when it came to its idea about</p> <p>22 security and how it differed from the way the</p> <p>23 laissez-faire attitude that CDK had when it came to</p> <p>24 security. And I wanted to ask whether it would have</p> <p>25 been beneficial for Reynolds' business if CDK changed</p>

<p style="text-align: right;">114</p> <p>1 its philosophy. You mentioned yesterday that CDK was 2 costing Reynolds millions of dollars by hacking in to 3 your system, and they were using the fact that you had 4 a closed system as a way to tell dealers that they 5 should switch DMSes over to the CDK DMS. So if CDK 6 changed its business practice and adopted a practice 7 more like Reynolds' practice of not allowing third 8 parties on its system, would that benefit Reynolds? 9 A. I hadn't really thought about that, but 10 certainly they would not be able to declare us fools 11 and idiots. And to that extent, I'm sure it would have 12 been beneficial. They would not have kept throwing the 13 way we were doing things up in our face in sales 14 situations. 15 Q. And it would have vindicated your position on 16 the importance of security for data as well? 17 A. Certainly it would. There's no question. 18 Q. Let me ask you to take a look at a document 19 we've labeled CX 1143 and ask you to take a look at it. 20 CX 1143 has Bates CDK_CID_01535307. It's a two-page 21 exhibit. 22 A. Yes, I find the next-to-the-last paragraph 23 somewhat amusing. 24 Q. I'm sorry, you are talking about the 25 next-to-the-last paragraph of the first page of the</p>	<p style="text-align: right;">116</p> <p>1 discussed yesterday as far as which telephone call, if 2 you could refresh my recollection in that. 3 Q. I believe it's CX 4043. 4 MR. COHEN: Here we go. I have 4043 in front 5 of him as well. 6 THE WITNESS: This is my list of talking points 7 for an eventual telephone conversation. 8 BY MR. ABRAHAMSEN: 9 Q. When you said this, you are referring to 10 CX 4043? 11 A. That's right. 12 Q. Had you had any other telephone calls with 13 Mr. Anenen in this June 30th time period aside from the 14 one call you reference in your e-mail? 15 A. As best as I can recall, that was the only one. 16 Mr. Anenen was a hard person to get ahold of. 17 Q. The response from Mr. Anenen is the first page 18 of CX 1143, and I would like you to take a look at the 19 indented part of the paragraph on the first page of the 20 exhibit and the first hash mark under the sentence that 21 begins with, Based on my assumption, it starts, "For 22 ADP", do you see that sentence? 23 A. I'm sorry, I don't know if I'm looking at the 24 right thing or the right side of it. 25 Q. Yes, CX 1143.</p>
<p style="text-align: right;">115</p> <p>1 exhibit? 2 A. Of the first page. It's the one that says, I 3 should point out, we have not been accessing R&R 4 systems for decades, as you said. Our business in 5 access R&R systems came to us through an acquisition. 6 I didn't think that acquiring something 7 automatically put them through the holy water. 8 Q. I appreciate that. His point about the number 9 of years that CDK had been accessing the Reynolds 10 system is a response to your e-mail to him; is that 11 correct? 12 A. Yes, I believe that's correct. 13 Q. So the record is clear, the Exhibit CX 1143 has 14 as the second page of the exhibit the first e-mail in 15 the e-mail and responsive e-mail. And the first e-mail 16 is from Mr. Brockman to Mr. Anenen on June 30, 2014. 17 And the first sentence of your e-mail to Mr. Anenen 18 states, "I think there is some confusion surrounding 19 the issue that I called you about last week." 20 Do you see that? 21 A. Yes. 22 Q. So is the call that you are referring to in the 23 first sentence of the second page of this exhibit the 24 telephone conversation that we discussed yesterday? 25 A. I'm not sure that I recall exactly what was</p>	<p style="text-align: right;">117</p> <p>1 A. Dash 001? 2 Q. Yes. 3 A. Excuse me, I was on the wrong page. And your 4 question? 5 Q. I was going to direct your attention to the 6 paragraph that's indented, and it's the first paragraph 7 under, "Based on my assumption". 8 A. This is the one that starts off, "For ADP to 9 provide integration to Naked Lime"? 10 Q. Correct. What did you interpret him to mean 11 when he talked in that paragraph about providing 12 integration to Naked Lime, having to go through a set 13 of defined, documented and thoroughly tested processes? 14 A. I interpreted that to mean what he was 15 describing was a 3PA process. 16 Q. And had you talked to him about having your 17 applications go through 3PA prior to receiving this 18 e-mail? 19 A. I had not personally. I would suspect by the 20 context that my people had been talking to his people. 21 Q. But at this time, by the time you read this 22 e-mail, CX 1143, you, at that point, were aware that 23 CDK had a 3PA program? 24 A. Yes, but my people had been talking about it to 25 me.</p>

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1 **Q. And he talks here about not only for Reynolds**
 2 **and Reynolds, but he also makes reference in the first**
 3 **sentence for ADP to provide integration to Naked Lime**
 4 **or R&R or any third party. What did you interpret him**
 5 **to be meaning when he said that for any third party**
 6 **they would have go through 3PA?**

7 A. I don't know that I paid a lot of attention to
 8 that particular line. What I was more interested in is
 9 that they were, as of this date, clearly getting behind
 10 the process of the stand down and they were describing
 11 things that they needed to have, which I considered to
 12 be reasonable as part of the soft landing.

13 **Q. So you thought it was reasonable for him to**
 14 **expect you to go through 3PA for your apps?**

15 A. Yes.

16 **Q. And with respect to his reference, and he says**
 17 **it twice in this paragraph, in the first line he talks**
 18 **about how this has to apply to any third party. And**
 19 **then the very last sentence of this paragraph says,**
 20 **"Every third party must operate within these**
 21 **parameters." Did you understand that sentence to mean**
 22 **that CDK was no longer going to adhere to its**
 23 **laissez-faire attitude about third parties?**

24 A. Clearly this e-mail represented -- it may not
 25 have been a change, but my understanding of where they

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1 were at from a security standpoint, it was obviously
 2 much different than what I had seen before.

3 **Q. And what did you take his sentence in the very**
 4 **next indented paragraph, in other words, the one that**
 5 **begins after the second hash mark, he's talking again**
 6 **about ADP's third-party approval and how they have been**
 7 **developed. And the last sentence is what I would like**
 8 **to -- the last two sentences are what I would like to**
 9 **point your attention to. The second-to-last sentence**
 10 **of the paragraph reads, "I am sure you will appreciate**
 11 **the need to have R&R follow the same process and meet**
 12 **the same standards. I believe that" -- I think the**
 13 **word "this" should be here -- that "this is the same**
 14 **point you make publicly."**

15 **Did you interpret that to mean that he was**
 16 **moving away from his position about -- his**
 17 **laissez-faire position about allowing third parties on**
 18 **to his system and that he was making reference to the**
 19 **fact that this is something that you had made public**
 20 **statements about?**

21 A. My interpretation of what this paragraph is all
 22 about is that the 3PA system had been around for a
 23 while but I had not known about it. And evidently,
 24 it's something that they provided to very large
 25 customers, large groups, chain dealerships. Auto

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1 Nation, of course, is their largest customer because
 2 it's the biggest chain dealer operator in the whole
 3 country.

4 What we are seeing here is a well-developed
 5 process, but I had not been aware of that before this.
 6 And to see what all he wrote here, actually it's
 7 comforting in that the worst situation would be if
 8 there were no process at all and they would have to
 9 build one from scratch. Looking at this one, you can
 10 say, well, this has been running for a while and it's
 11 well documented. It looks like it would be a
 12 reasonable process to interface using what he's laying
 13 out here.

14 **Q. And he's kind of making a point, if I'm**
 15 **interpreting this correctly, that almost explaining why**
 16 **maybe you haven't heard about it, that you have been**
 17 **very public about your position when it comes to third**
 18 **parties accessing your DMS, and he's kind of hinting**
 19 **that you may not have known this because we haven't**
 20 **made it public yet that we are going to take the same**
 21 **position that you are going to take on third-party**
 22 **access. Did you interpret this e-mail that way?**

23 A. I don't know that I thought that deeply about
 24 it. It was mainly a sigh of relief on my part that we
 25 weren't going to have to start from scratch to build up

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1 an interface.

2 **Q. The next paragraph -- the next paragraph on the**
 3 **first page of this paragraph that's not indented**
 4 **begins -- and this is the one that you referenced**
 5 **before I had even asked a question about the exhibit,**
 6 **the "I should point out" paragraph, and I would like to**
 7 **turn your attention to the last two sentences of that**
 8 **paragraph. The second-to-last sentence says, "I would**
 9 **be remiss not pointing out that R&R is accessing the**
 10 **ADP system through a contract with Authenticom and has**
 11 **been doing so for quite some time without an agreement**
 12 **from ADP. We need to clean this up as well."**

13 **What did you interpret those two sentences to**
 14 **mean?**

15 A. Well, there is no question we had been using
 16 Authenticom on a very small scale to provide service
 17 reminder follow-up data, addresses and names of
 18 customers that own vehicles that sign up to have an oil
 19 change or have a 100,000 mile checkup or whatever.

20 As far as what arrangements that Authenticom
 21 had, that was beyond our vision. We don't get to see
 22 what Authenticom does or was doing at that time. And
 23 what he's saying here in so many words is that
 24 Authenticom doesn't have a contract with us.
 25 Authenticom is acting as a hacker into CDK's systems.

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1 And he's being fairly gentle about pointing that out
2 because we truly didn't understand what Authenticom was
3 doing, what permissions they had and which ones they
4 didn't.

5 **Q. When he said "we need to clean this up as
6 well", is he suggesting that you need to stop using
7 Authenticom to access the CDK system?**

8 A. That was my interpretation.

9 **Q. And did this suggest to you that CDK was moving
10 away from its laissez-faire attitude about third
11 parties and was going to take a stricter approach in
12 terms of not allowing third parties to hack into its
13 system?**

14 A. I wouldn't say that I perceived that at this
15 point. It wasn't until they started publicly
16 announcing 3PA that I took notice.

17 **Q. Why would he be e-mailing you that you needed
18 to clean this up as well if CDK wasn't interested in
19 stopping the use of third-party integrators on its
20 system?**

21 A. Again, I don't think I thought that deeply.
22 This was -- at this stage of this project, you know, my
23 efforts were pretty much done because I forced the
24 issue with Steve Anenen. And after that I'm backing
25 away because I'm on to whatever the next hill is.

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1 **Q. This notion that Reynolds had been using
2 Authenticom and that CDK was going to ask you to clean
3 that situation up, was that a topic that you and
4 Mr. Anenen had discussed on the telephone?**

5 A. I'm sorry, I don't recall whether we did or
6 didn't. But it was absolutely clear what he was saying
7 in this letter.

8 **Q. That the third-party integration that had been
9 going on would not be allowed to continue?**

10 A. Yes.

11 **Q. Was that something you talked to Mr. Anenen
12 about, whether CDK was also, in addition to seeing to
13 it that Reynolds stopped using third-party integration
14 on its system that CDK was also going to stop being so
15 laissez-faire about other parties using third-party
16 integration on the CDK system?**

17 A. Again, I'm not perceiving that far deep into
18 this letter. I'm -- again, I think I'm out of this
19 project and I'm on to the next one.

20 **Q. I can't remember how I started my question, so
21 I'm going to maybe ask the same question, but I don't
22 think so.**

23 MR. COHEN: You have asked the same question
24 for about 45 minutes in several different ways, and I
25 haven't objected once and I'm not going to. But the

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1 answer is not going to change.

2 THE WITNESS: Can I declare a timeout?

3 (A recess was taken.)

4 BY MR. ABRAHAMSEN:

5 **Q. Before the break we were talking about CX 1143
6 and how it had followed a telephone conversation you
7 had had with Mr. Anenen. In that telephone
8 conversation with Mr. Anenen, had he said anything that
9 led you to believe that CDK was no longer going to take
10 a laissez-faire attitude about third-party integration
11 on its DMS system and was going to be adopting a system
12 where they would no longer permit third parties to
13 integrate on its system?**

14 A. We never had any conversation about that. When
15 I finally learned about it, I wasn't surprised because
16 I thought the way they were doing it before was really
17 stupid from a security standpoint. And probably from a
18 general background statement, I consider really
19 everything that CDK does to be inferior. And that's --
20 I have been competing with them now since 1975. So
21 therefore, I don't spend any time, quote, watching what
22 CDK does. I find it humorous that they turn over chief
23 executive officers as often as they do. But other than
24 that, as far as operationally or technically, whatever,
25 I pay no attention to what they do.

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1 **Q. You mentioned in a prior answer that you had
2 learned about CDK's 3PA program from people who report
3 to you. Who would that have been?**

4 A. Probably Bob Schaefer.

5 **Q. Let me ask you to take a look at a document
6 we've marked as CX 4036. The Exhibit CX 4036 has Bates
7 REYCID0264663, and my understanding is that these are
8 notes that you prepared for yourself to deliver remarks
9 at a sales meeting on July 14, 2014; is that correct?**

10 A. Yes, that's correct.

11 **Q. I wanted to ask you to take a look at the
12 second page of the Exhibit CX 4036-002, and at the
13 bottom of the page there is a paragraph titled
14 Security. Do you see that?**

15 A. Yes.

16 **Q. The second bullet down talks about the early
17 stages of negotiating an agreement, and it says it's a
18 similar agreement. When you say similar agreement, is
19 that a reference to the reference in the first bullet
20 that Reynolds had reached an agreement with
21 Mr. Batista?**

22 A. Yes, the most important part of which is that
23 Phil Batista, since lost in court, was no longer going
24 to be hacking Reynolds' sites and there was going to be
25 an orderly stand down. And that was the way it looked

<p style="text-align: right;">126</p> <p>1 like the agreement with ADP would take place. It would 2 be similar.</p> <p>3 Q. So you had had a court case going against 4 Mr. Batista, and then ultimately you settled that court 5 case?</p> <p>6 A. I don't know who brought it in the first place, 7 whether it was us or whether it was Mr. Batista. And 8 the final disposition, whether it was a settlement or 9 whether it was an agreed verdict, I'm not aware.</p> <p>10 Q. And the reference in the first bullet "reached 11 an agreement where Phil is getting out of the 12 business", is that what you would call a wind down 13 agreement with Mr. Batista?</p> <p>14 A. Yes.</p> <p>15 Q. And were the terms basically that he would stop 16 doing integration on Reynolds but he would do so in a 17 way that allowed his clients to continue to do the 18 integration for a period of time until they could move 19 into the RCI program?</p> <p>20 A. Yeah. It was an orderly stand down would be 21 the way I would characterize it.</p> <p>22 Q. And Mr. Batista, his company is SIS?</p> <p>23 A. Yes.</p> <p>24 Q. The third hash mark down under security on 25 CX 4036-002 states, "ADP seems to be becoming aware of</p>	<p style="text-align: right;">128</p> <p>1 documents, is very organized, very structured, has 2 contracts. The 3PA system provides for ADP to 3 understand exactly what data is being extracted from 4 systems. And I think they probably started to become 5 aware of what was happening from a hacking standpoint 6 of their DMS system.</p> <p>7 Q. You said in a prior answer that 3PA had been 8 around for a while. It's just that you hadn't heard of 9 it.</p> <p>10 A. Well, I made that statement based on the fact 11 that it was a pretty complete definition of how it 12 ought to be done. And that's not typically something 13 you start with on day one. So therefore, it was -- I 14 can't tell how mature it was, but it was certainly past 15 starting, for sure.</p> <p>16 Q. But your comments that you are going to make to 17 your salespeople are sort of -- make it sound to me 18 that because you say ADP seems to be becoming aware of 19 the laws, that there was something recent.</p> <p>20 A. It was recent knowledge to me.</p> <p>21 Q. And what was it about the existence of the 3PA 22 program that gave you insight into ADP's thinking about 23 the laws?</p> <p>24 A. Well, as far as compliance with the law, my 25 belief is that to do it legally, you got to have</p>
<p style="text-align: right;">127</p> <p>1 the laws and liabilities involved." Do you see that? 2 A. This is in the last section titled Security?</p> <p>3 Q. It's the third hash mark down.</p> <p>4 A. Yes, I see that.</p> <p>5 Q. What did you mean by ADP seems to be becoming 6 aware of the laws?</p> <p>7 A. The very existence, which was in relatively 8 recent news to me, was the fact that the 3PA program 9 existed at all and the fact that they were talking 10 about that. Again, that was new news to me or 11 relatively new.</p> <p>12 Q. What laws were you referring to?</p> <p>13 A. The ones -- and I should know the names of 14 them, but the ones that were discussed in the document 15 produced by NADA.</p> <p>16 Q. And had you talked to Mr. Anenen about the 17 applicability of those laws?</p> <p>18 A. No. I just had disagreed with the way it was 19 interacting with our systems.</p> <p>20 Q. But you told your sales force that ADP seems to 21 be becoming aware of the laws. What was your basis for 22 saying that?</p> <p>23 A. The fact that I had become aware of the 3PA.</p> <p>24 Q. What did 3PA have to do with laws?</p> <p>25 A. Well, 3PA is, as we've seen in just prior</p>	<p style="text-align: right;">129</p> <p>1 contracts, you got to have definitions, you got to have 2 an explicit listing of what data fields are going to be 3 removed from the DMS system. And this is -- the fact 4 that there was the existence of the 3PA at all was at 5 variance with what the status quo had been as far as my 6 knowledge is concerned.</p> <p>7 And talking to the salespeople, the point I'm 8 trying to make is that, well, it kind of looks like 9 that CDK is going to have a formal process, and 10 therefore, they are not going to be able to throw rocks 11 at us for having a formal process, which the sales 12 force are the people that take the stones on this 13 particular subject. That's why I was telling them that 14 it looked like the world is perhaps changing.</p> <p>15 Q. And you talked in this same sentence about 16 liabilities, that ADP seems to be becoming aware of the 17 laws and liabilities. What liabilities were you 18 referencing?</p> <p>19 A. Well, the very fact that the 3PA agreement 20 meant to me that they were changing their previous 21 positions of laissez-faire, and that has -- if you 22 describe laissez-faire from a business standpoint, it's 23 treacherous because if there's a breach and you 24 don't -- you are operating without contracts and 25 without definitions of who is doing what, it makes for</p>

<p style="text-align: right;">130</p> <p>1 a really messy situation as far as liability is</p> <p>2 concerned.</p> <p>3 Q. Liabilities like the ones we talked about</p> <p>4 yesterday where if a third party sent data into the</p> <p>5 wrong hands, the DMS is the deep pocket?</p> <p>6 A. Exactly.</p> <p>7 Q. And you state in the next hash mark down, "This</p> <p>8 could put the security wars very much behind us." Is</p> <p>9 this referencing back to the prior bullet about ADP</p> <p>10 becoming aware of the laws and liabilities?</p> <p>11 A. I would say that would be correct.</p> <p>12 Q. Let me ask you to take a look at CX 4037.</p> <p>13 CX 4037 has Bates REYCID0513201, and it appears to be</p> <p>14 an e-mail from Mr. Schaefer to Mr. Brockman. It's</p> <p>15 dated September 11, 2014.</p> <p>16 A. The print on this one is really small. Yes.</p> <p>17 Q. The exhibit has a paragraph that contains four</p> <p>18 numbered paragraphs, the longest of which is number 4,</p> <p>19 which starts out "CDK also wants to begin discussing</p> <p>20 the tactical direction for the following." And this</p> <p>21 is -- these are subjects that are being negotiated</p> <p>22 between CDK and Reynolds with regard to what ultimately</p> <p>23 becomes a contract that's signed in February of 2015;</p> <p>24 is that correct?</p> <p>25 A. Yes, that's correct.</p>	<p style="text-align: right;">132</p> <p>1 A. I don't know that. We don't have that</p> <p>2 information. They don't tell us that, but they infer</p> <p>3 that. But as far as what prices SIS was charging, we</p> <p>4 don't know.</p> <p>5 Q. Well, did you know what price you were paying</p> <p>6 Authenticom to integrate apps on to the CDK system?</p> <p>7 A. I was not personally aware of that, it was such</p> <p>8 a minor piece of business. Reminder cards is not</p> <p>9 really a huge deal. I think we pay more for the</p> <p>10 postcard than the rest of it.</p> <p>11 Q. Was it generally the case that the third-party</p> <p>12 integrators were charging less than what 3PA and RCI</p> <p>13 were going to be charging for integration?</p> <p>14 A. I don't have direct knowledge of that, but I</p> <p>15 wouldn't be surprised if that was the case.</p> <p>16 Q. The next paragraph down, in other words, 4C,</p> <p>17 talks about communication plan and marketing</p> <p>18 announcement, and the first clause of the sentence</p> <p>19 under paragraph i says, "How will the agreement be</p> <p>20 announced to the market."</p> <p>21 What was the issue with regard to announcing</p> <p>22 the agreement to the market?</p> <p>23 A. CDK was very, very sensitive -- this was their</p> <p>24 issue, was very, very sensitive about how all this was</p> <p>25 going to happen. We are not, you know, marketing kind</p>
<p style="text-align: right;">131</p> <p>1 Q. And the paragraph B starts out "RCI pricing,</p> <p>2 minimums, et cetera," and has one little subparagraph</p> <p>3 under it. And there's a reference in the -- well, it's</p> <p>4 the first sentence, but it's a very long sentence and</p> <p>5 there's some dashes, and it's talking about Menu</p> <p>6 Advantage [sic], and then the sentence continues, Their</p> <p>7 contract is not up with SIS until July 2015.</p> <p>8 Was this a reference to CDK using SIS to</p> <p>9 integrate Menu Advantage on Reynolds' DMSes?</p> <p>10 A. Yes, that's correct.</p> <p>11 Q. And was this integration by SIS subject to the</p> <p>12 wind down agreement, as far as you know?</p> <p>13 A. I'm not sure about that. What I think is</p> <p>14 happening here is that Phil Batista and SIS, Phil is a</p> <p>15 snake, and it looks to me like that CDK has finally</p> <p>16 become aware of his true qualities and nature, and they</p> <p>17 are deciding they want to move to a place where they</p> <p>18 are not doing business with him anymore, which I'm not</p> <p>19 surprised.</p> <p>20 Q. The sentence goes on and -- I know you didn't</p> <p>21 write this, but I appreciate your interpreting it for</p> <p>22 us. It says that when they go with Reynolds, they'll</p> <p>23 be paying Reynolds a much higher price than what SIS is</p> <p>24 currently charging them. How much higher price would</p> <p>25 CDK pay Reynolds compared to what it was paying SIS?</p>	<p style="text-align: right;">133</p> <p>1 of folks. We are programmers and technical kind of</p> <p>2 folks, and this was not something that we brought up.</p> <p>3 It was their issue. And at this point we had not given</p> <p>4 the slightest thought to that there would even be a</p> <p>5 marketing program around an announcement, but that's</p> <p>6 their deal. So we were not opposed to that.</p> <p>7 Q. What would the announcement be if Reynolds</p> <p>8 could get its -- what would Reynolds want the public</p> <p>9 announcement to say?</p> <p>10 A. We would not want it to say anything as far as</p> <p>11 we are concerned. We would be just as happy if it</p> <p>12 didn't exist.</p> <p>13 Q. Is this something you discussed with</p> <p>14 Mr. Schaefer? He's writing you this e-mail that</p> <p>15 contains this sentence.</p> <p>16 A. I would say probably we did, and probably I</p> <p>17 would have communicated exactly what I have</p> <p>18 communicated to you. We are not spinmeisters.</p> <p>19 Q. The impression I get from having read documents</p> <p>20 in this matter is that Mr. Schaefer thought that a</p> <p>21 public announcement was very important to you. Do you</p> <p>22 know why we would see that in the documents given what</p> <p>23 you have stated about the lack of enthusiasm for a</p> <p>24 public announcement that you are testifying about?</p> <p>25 A. Well, I'm sure I would have talked to Bob</p>

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1 Schaefer about this issue. But again, a joint
2 marketing announcement with CDK is not something I get
3 all, you know, wet and tingly about.

4 **Q. The notion that there would be an announcement**
5 **that CDK was no longer being agnostic about third**
6 **parties integrating on its platform would seem to be**
7 **beneficial to Reynolds in the sense that it would be**
8 **public acknowledgment that they were no longer going to**
9 **be throwing rocks at you for your stance on security.**

10 A. I would think that that would be the furthest
11 thing from their mind because they are the ones that
12 want to do it, which means they are going to want it to
13 be favorable to them. And anything that's favorable to
14 them is unfavorable to us. Anything that's favorable
15 to us would be unfavorable to them.

16 **Q. Well, what would be favorable to you in terms**
17 **of an announcement?**

18 A. Nothing. No announcement. That would be our
19 preference.

20 **Q. You wouldn't want an announcement that CDK was**
21 **going to stop coming into your system unauthorized?**

22 A. I don't think that there was any way in the
23 world that CDK would admit that in a marketing
24 announcement. I mean, it would be like a public
25 confession that they were hackers and had been hackers

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1 for years. I mean, there's no way in the world they
2 would have agreed to let that be any part of a press
3 announcement.

4 **Q. I have noticed from reading the final agreement**
5 **that it says that both companies will agree on press**
6 **releases. Was that something Reynolds wanted the**
7 **agreement to say or was that --**

8 A. Well, what it is, it's a tit for tat. They
9 would want it to say that they could agree and approve
10 it, and we would say, no, it's got to be joint which
11 means if we didn't like it, it would not happen. It's
12 one of those kind of situations where you got two
13 parties and it has to be unanimous consent or nothing
14 happens.

15 **Q. Was that a provision that Reynolds felt**
16 **strongly about having in the agreement?**

17 A. Certainly I would have thought so. I'm not
18 aware exactly how it was handled in the final
19 agreement, but I would hope that our legal department
20 would be diligent enough to not give CDK a one-sided
21 ability to approve anything.

22 **Q. Is there anything that you could have said to**
23 **Mr. Schaefer that would have given him the impression**
24 **that you were strongly in favor of a public**
25 **announcement about the agreement with CDK?**

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1 A. I don't think so, but probably at this point
2 I'm not far enough along in thinking about how the
3 whole thing is going to wind down because again, as I
4 have said before, I was around a lot in the beginning.
5 There was a pile on my desk in the beginning, but once
6 it got past the point there wasn't a pile on my desk
7 anymore, I got other piles to work on. At this point
8 it's in the later stage of the whole situation.

9 **Q. Right, but early on in the process is there**
10 **anything you could have said to Mr. Schaefer that would**
11 **have given him the impression that Reynolds wanted to**
12 **be having a public statement about the agreement with**
13 **CDK?**

14 A. Well, I think that there's -- Bob Schaefer
15 feels much more strongly about that than even I do.
16 And quite possibly we might have had a conversation,
17 but when it comes down to the final thing, CDK wanted
18 so much means that automatically it's good for them and
19 it's not good for us when you really in the cold, clear
20 light of day and you think about it. But prior to the
21 cold, clear light of day, it's possible I have had
22 conversations with -- and we thought that it might have
23 been a good idea. But when you really think about it,
24 it's not.

25 **Q. Let me ask you to take a look at CX 4273.**

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1 **CX 4273 has Bates REYCID0675646. It's entitled**
2 **Settlement Agreement, and the subtitle is The Reynolds**
3 **& Reynolds Company versus Superior Integrated**
4 **Solutions, Inc., and then it gives the court that the**
5 **settlement is in front of.**

6 A. (Reviewing document.)

7 **Q. Mr. Brockman, the document, the settlement**
8 **agreement that I have shown you at CX 4273 on page 007**
9 **of the document, it indicates that it was agreed to on**
10 **the 5th day of March 2014. And I guess my question is,**
11 **is the settlement agreement the agreement you were**
12 **referring to in CX 4036, which was your statement to**
13 **the sales executives on July 14, 2014?**

14 A. Yes, I believe that's the case.

15 **Q. And you had mentioned in a prior answer that**
16 **Mr. Batista ran a company called SIS. And just for the**
17 **record, SIS is the acronym for Superior Integrated**
18 **Solutions, Inc.; is that correct?**

19 A. Correct.

20 **Q. What exactly was SIS doing with regard to its**
21 **interactions with the Reynolds system?**

22 A. It was one of the Japanese manufacturers, I
23 think it was Subaru, had plans for building what I
24 would call a wrapper around the DMS system so that the
25 user interfaces would be exactly like Subaru wanted.

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1 It would be Subaru-specific. And what SIS had agreed
2 to do involved really getting into our system in much
3 greater detail than anybody else had ever attempted.
4 And this settlement basically we thought we killed the
5 snake here. Unfortunately, we've not killed the snake.

6 Next time around Phil Batista got really,
7 really clever, because he was banned from the RCI
8 system forever because -- as part of this settlement.
9 But I mean, he created an absolute fraud. He went out
10 and had another company created that achieved RCI
11 status and then he used them to collect all the data as
12 opposed to him doing it directly in contravention of
13 what he agreed to here and started selling an interface
14 for a product called Darwin, which we touched on, I
15 think, maybe perhaps the first day.

16 And what Darwin is, is a system that competes
17 in a way against DocuPad. What it does is it handles
18 presentation of products, aftersale products to the
19 consumers. And we mentioned the fact that its major
20 drawback is it can't recompute the payments based upon
21 what's either bought or decided not to buy as part of
22 the aftersale process, extended warranties, all that
23 manner of stuff.

24 And wildly enough, he had gotten some fairly
25 large Reynolds accounts to buy Darwin. And we were

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1 then our rights -- I mean, he clearly violated
2 everything in the book, but we couldn't shut him down
3 because of the nature of the customers that he already
4 had, which were also our customers. Had to shut the
5 whole thing down. So we entered into a new stand down
6 agreement, and I think it's coming up sometime early
7 next year where he stands down once again. It's a
8 miserable deal, and I hated to settle with him, but
9 from a business standpoint, we were just compelled to.

10 **Q. You didn't want to settle with him because that**
11 **would mean he would get the benefit of the wind down**
12 **period; is that correct?**

13 A. Yeah.

14 **Q. You said from a business standpoint, you had to**
15 **settle with him?**

16 A. Well, because of the relationships with our --
17 his customers that's also a big customer of ours.

18 **Q. Which customer was it, if you recall?**

19 A. I'm sorry, I don't remember, but it was a
20 significant customer. And I think there was more than
21 one.

22 **Q. Was SIS accessing the Reynolds DMS in a way**
23 **that was technologically different than the way, say,**
24 **DMI, IntegraLink and Authenticom were accessing the**
25 **system?**

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1 A. It was different in some respects. I can't
2 tell you specifically what they were, but Phil is much
3 smarter than the folks at CDK. And my view of the
4 situation, I was under the impression that it was a
5 more sophisticated approach.

6 **Q. I have seen in the documents the phrase "code**
7 **on the box." Are you familiar with that phrase?**

8 A. Very much so. It is very, very unpleasant as
9 far as we are concerned.

10 **Q. Would that be an accurate description of how**
11 **SIS was accessing the Reynolds DMS?**

12 A. I'm not clear as to exactly from a technical
13 standpoint how that was done. I would expect Bob
14 Schaefer to know.

15 MR. COHEN: Mr. Abrahamsen, can we take our
16 hourly break?

17 MR. ABRAHAMSEN: Yes.

18 (A recess was taken.)

19 BY MR. ABRAHAMSEN:

20 **Q. So we were speaking before the break at**
21 **CX 4273, which is the settlement agreement with SIS.**
22 **Was SIS integrating other third-party apps on to the**
23 **Reynolds system? You mentioned the Subaru one, so**
24 **referring to others than the Subaru one you mentioned.**
25 A. I'm not aware that they were. We had ample

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1 evidence of Subaru. More than enough. So he could
2 have been doing other ones that we would not know
3 about. We would have no practical way to understand
4 what else he might be doing.

5 **Q. Let me ask you to take a look at page 003 of**
6 **CX 4273, and there's a paragraph, well Roman V, so like**
7 **a V. And I was looking at the first sentence of that**
8 **long paragraph, and there's a first clause, and then**
9 **the sentence continues after the parenthetical "SIS and**
10 **Mr. Batista, on behalf of themselves and their**
11 **employees and affiliates, covenant and agree not to**
12 **integrate with, access or attempt to integrate with or**
13 **access any Reynolds-brand DMS."**

14 A. Now we think we've got him.

15 **Q. So this is a prohibition on Mr. Batista and his**
16 **company integrating on the Reynolds DMS?**

17 A. Yes.

18 **Q. And then the next sentence states, "SIS and**
19 **Mr. Batista further covenant and agree not to sell,**
20 **transfer or assign to any affiliate or third party any**
21 **technology or know-how regarding integration with**
22 **Reynolds-brand DMS." And it goes on. What is this**
23 **prohibition aimed at?**

24 A. The same that him accessing Reynolds DMSes, DMS
25 systems in any way forever.

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1 **Q. And what's the reference to third parties?**

2 A. He won't assist third parties with technology
3 or know-how.

4 **Q. And what was the concern about technology and
5 know-how with regard to third parties that you are
6 trying to address in this paragraph?**

7 A. We believed at that time and still do that Phil
8 is very smart and he is technologically the most
9 superior hacker, as far from a technology and knowledge
10 standpoint, better than DMI and IntegraLink.

11 **Q. And what third parties are you trying to
12 address in this paragraph?**

13 A. People that are doing the same thing or similar
14 things that Phil Batista is doing, which we would like
15 to think we were aware of all of them, but that's not
16 necessarily the case.

17 **Q. Then further down after there's a reference to
18 paragraph 3.A.v, and the sentence states that the
19 covenants set forth are not intended as a covenant not
20 to compete but rather as a contractual restriction of
21 access and attempted access intended to protect the
22 operational and data security -- I'm sorry, yeah, data
23 security integrity of the DMS. What is that a
24 reference to?**

25 A. I think that that is just stating further again

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1 in a different way that he's not going to access
2 Reynolds' DMS systems. Whoever wrote this paragraph v
3 made a very serious effort to contractually lay that
4 down. And again, we thought we had killed the snake,
5 but we didn't.

6 **Q. When you say "lay that down" in that answer,
7 you mean lay down the prohibition about Mr. Batista
8 accessing your DMS?**

9 A. That's correct.

10 **Q. And the next sentence says, "These covenants
11 are intended to extend for the life of any Reynolds DMS
12 product." And that's just what you referenced in an
13 earlier answer, that you wanted this to extend for as
14 long as Reynolds was in the DMS business?**

15 A. Correct.

16 **Q. You mentioned in a prior answer that
17 Mr. Batista sought access to the Reynolds DMS after
18 this settlement agreement was reached, which was in
19 2014. What was the name of the entity that later tried
20 to get access to the Reynolds DMS?**

21 A. I don't remember the name of the entity which
22 essentially was a straw entity, which is how he got
23 access. Basically that straw entity did all the
24 accessing and fed him the data that he needed for the
25 application that he was building. We know what that

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1 entity is, but I personally don't know the name of it.

2 **Q. And is the entity you are referring to, is it
3 gaining access to the Reynolds DMS through the same
4 type of technique that SIS was using or is it going in
5 through RCI?**

6 A. It's my understanding that this straw entity
7 had an RCI agreement and essentially used the power in
8 that RCI agreement to do what Phil Batista wanted to
9 get done. And they did it and turned everything over
10 to him on an ongoing basis the data that was required
11 for the product that he had built, which is either this
12 paragraph V is defective and the lawyer missed that
13 point or there's a case of fraud and deception. I
14 believe it's a case of fraud and deception.

15 **Q. Let me show you three exhibits. These are the
16 three contracts that were executed between CDK and
17 Reynolds. We'll go through them one at a time,
18 obviously, but perhaps for the economy of time, we'll
19 just put them all on the record now and then I'll ask
20 my various questions about them as we go forward.**

21 MR. COHEN: Then we'll have them all in front
22 of him, sure.

23 MR. ABRAHAMSEN: And they are CX 4045, which is
24 the Data Exchange Agreement; CX 4152, which is the 3PA
25 Agreement; and Exhibit 4153 which is the Reynolds

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1 Interface Agreement.

2 CX 4152 has Bates REYREY0000091. CX 4153 has
3 REYREY0000025. And CX 4045 has Bates REYREY0000012.

4 BY MR. ABRAHAMSEN:

5 **Q. Before we plunge into the actual words in the
6 contracts, let me ask you a broader question. Just
7 could you state for the record what your role was with
8 regard to these contracts.**

9 A. Very minimal.

10 **Q. Who was responsible for having these contracts
11 come into being for Reynolds?**

12 A. Bob Schaefer.

13 **Q. Anyone else?**

14 A. I don't know to what extent our legal
15 department played in actually constructing the
16 contracts. Again --

17 **Q. I meant my question to kind of exclude the
18 legal department. I'm sorry, I should have made that
19 more explicit. And I intentionally cut you off.**

20 MR. COHEN: Thank you. I was listening and I
21 was comfortable with Mr. Brockman's response, but I
22 appreciate your safeguarding the privilege. And the
23 fact that he consults lawyers for legal contracts is
24 hardly earth shattering.

25 BY MR. ABRAHAMSEN:

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1 **Q. But were there any other businesspeople**
 2 **involved in negotiating these contracts with CDK other**
 3 **than Mr. Schaefer?**

4 A. Not that I'm aware. Certainly all discussion I
 5 had about the subject was with Bob Schaefer.

6 **Q. Let me ask you to take a look at CX 4152 and**
 7 **ask you to look at CX 4152-016. I believe my questions**
 8 **will continue on. We'll have the same questions for**
 9 **the next several pages.**

10 **In the first part of the document, Section 1:**
 11 **List of Third Party Access Utilized, and then there's**
 12 **several entries. Extract Inventory Vehicles - Batch,**
 13 **what is this part of the contract referring to?**

14 A. This would be they keep vehicle inventories in
 15 a separate area inside their database, and the access
 16 would be to -- on a batch basis. And by batch, that's
 17 when you have a program that runs that copies records
 18 from one file into another file, and it does it without
 19 benefit of any screen interaction. That's why it's
 20 called batch.

21 **Q. Is this part of the contract starting with**
 22 **CX 4152-016, are these Reynolds applications that are**
 23 **going to be integrated into the CDK DMS through 3PA?**

24 A. I'm under the impression that these are records
 25 that will come out of 3PA and be used in a marketing

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1 application in our marketing arm.

2 **Q. And what is your marketing arm?**

3 A. Naked Lime Marketing.

4 **Q. So Naked Lime Marketing will get data from CDK**
 5 **DMSes through 3PA?**

6 A. Yes.

7 **Q. And could you just go through the next couple**
 8 **of pages and just tell us what the other applications**
 9 **are? For instance, number 2 on CX 4152-017 appears to**
 10 **be Naked Lime Web.**

11 A. I'm sorry, I'm not following where I'm supposed
 12 to be.

13 **Q. CX 4152-017, there's a numbered paragraph in**
 14 **the middle of the page, number 2, Application Served.**

15 A. Yes.

16 **Q. What is Naked Lime Web?**

17 A. That's where we have a service which creates
 18 and maintains the website for a dealership, which is a
 19 very important part of their marketing.

20 **Q. And that would now be getting data through 3PA;**
 21 **is that correct?**

22 A. Yeah. Vehicle inventory data, that's correct.

23 **Q. And flipping over to CX 4152-018, number 3 is**
 24 **toward the top of the page and it's talking about**
 25 **ReminderTRAX. What is that?**

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1 A. That is the service that prepares service
 2 reminder cards to be sent out to the consumers
 3 encouraging them to bring their vehicles in for
 4 50,000-mile service or winterizing or de-winterizing,
 5 that sort of thing.

6 **Q. And after the contract is signed, ReminderTRAX**
 7 **would be getting data from CDK DMSes through 3PA; is**
 8 **that correct?**

9 A. That's correct.

10 **Q. Let me ask you to flip to the first page of the**
 11 **Exhibit CX 4152-001, and under Background in the second**
 12 **paragraph it says, Vendor provides its application**
 13 **programs" and then there's a parenthetical "as further**
 14 **described in section is 2 of Exhibit 3PA-B, including**
 15 **all subparts, the applications, close quote, to certain**
 16 **CDK clients. So those are the Reynolds applications we**
 17 **were starting to look at a couple of questions ago; is**
 18 **that correct?**

19 A. That's correct.

20 **Q. Let me ask you to look at CX 4152-004, and**
 21 **actually it's paragraph E on that page. And I'm going**
 22 **to ask you whether this paragraph prohibits Reynolds**
 23 **from using hostile integrators for its applications.**
 24 **And I draw your attention to the first -- well, there's**
 25 **a sentence ten lines down in subparagraph E --**

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1 MR. COHEN: I'm sorry, Dana, my assistant is
 2 bringing me something.

3 (Discussion off the record.)

4 BY MR. ABRAHAMSEN:

5 **Q. I'm sorry, Mr. Brockman, I'm having difficulty**
 6 **asking you to turn your attention to the sentence I**
 7 **want to ask you about. It's ten lines down in**
 8 **subparagraph E, and it begins, "Vendor agrees that it**
 9 **will not".**

10 A. I'm sorry, I'm just not finding that. I'm
 11 quite sure it's probably here, but this paragraph is a
 12 killer.

13 **Q. I'm sorry.**

14 A. Typically what I do when I'm faced with having
 15 to understand something like this is I get a copy in
 16 Word and I go back through and wherever I think I need
 17 new paragraph ought to start, I hit a return, and I end
 18 up with something that's about this long, but you can
 19 read it.

20 **Q. It's ten lines down in subparagraph E.**

21 A. Okay.

22 **Q. And I'm not going to read -- it's a long**
 23 **paragraph and this is a long sentence. I'll ask you to**
 24 **read that sentence and then answer my question, which**
 25 **is whether this sentence is stating that Reynolds**

<p style="text-align: right;">150</p> <p>1 agrees not to use hostile integrators to get onto the</p> <p>2 CDK system.</p> <p>3 A. Yes, I see and understand that provision.</p> <p>4 Q. Is my statement correct that that provision</p> <p>5 prohibits Reynolds from hostilely integrating onto the</p> <p>6 CDK system?</p> <p>7 A. Yes, that's correct.</p> <p>8 Q. Let me ask you to take a look at the second</p> <p>9 exhibit in our series of three exhibits. It's CX 4153.</p> <p>10 This is the Reynolds Interface Agreement. I'm going to</p> <p>11 direct your attention to two provisions starting with</p> <p>12 definition 1.8 on CX 4153-002, Non-Approved Access. Do</p> <p>13 you see that definition?</p> <p>14 A. Yes.</p> <p>15 Q. And is that definition a provision that is</p> <p>16 relevant to CDK getting direct or indirect access onto</p> <p>17 the Reynolds system for applications?</p> <p>18 A. (Reviewing document.)</p> <p>19 Q. Mr. Brockman, let me ask you to take a look at</p> <p>20 CX 4153-006. The very first provision on that page is</p> <p>21 paragraph 2.5.3, Compliance With Certification.</p> <p>22 A. I'm sorry, I'm a little bit lost. Could you</p> <p>23 repeat the directions again.</p> <p>24 Q. No problem. CX 4153-006, at the very top of</p> <p>25 that page, the first provision, 2.5.3.</p>	<p style="text-align: right;">152</p> <p>1 A. What it is, it is an anti-hacking provision.</p> <p>2 And it's pointed not at CDK, but at anybody that CDK</p> <p>3 might help or share information with. That's my</p> <p>4 understanding.</p> <p>5 Q. So when you say it's anti-hacking, what is</p> <p>6 the -- what was the fear that was being covered by this</p> <p>7 paragraph?</p> <p>8 A. Well, what's happening in general with all</p> <p>9 these agreements is that Reynolds and CDK have agreed</p> <p>10 to provide RCI interfaces to each other under standard</p> <p>11 terms and conditions. And what this specific provision</p> <p>12 is all about is that not only do we agree not to hack</p> <p>13 each other, to only use authorized interfaces, but to</p> <p>14 not help or assist or teach anybody else how to hack</p> <p>15 into CDK's systems or Reynolds' systems. That's the</p> <p>16 whole thrust.</p> <p>17 Q. So at this point does this paragraph, since it</p> <p>18 applies to CDK and Reynolds, is this an indication to</p> <p>19 you that CDK has moved away from its laissez-faire</p> <p>20 attitude and is now concerned about hackers getting</p> <p>21 into their system?</p> <p>22 A. I hadn't thought about it in that light, but</p> <p>23 yeah, I believe that you could see it that way.</p> <p>24 Q. Let me ask you to look at paragraph</p> <p>25 CX 4045-003, and I'm looking at paragraph 4.2,</p>
<p style="text-align: right;">151</p> <p>1 A. Okay, I have got 2.5.3.</p> <p>2 Q. Compliance With Certification.</p> <p>3 A. Yes, I see that.</p> <p>4 Q. Okay. I'm looking at the second clause of the</p> <p>5 first sentence, "CDK acknowledges that any non-approved</p> <p>6 access and/or non-approved use is strictly prohibited</p> <p>7 and is considered a material breach of this RCI</p> <p>8 agreement." Is this a prohibition on CDK using hostile</p> <p>9 integration to get onto the Reynolds system?</p> <p>10 A. That's correct. It's an anti-hacking</p> <p>11 provision.</p> <p>12 Q. Let me ask you to turn to our third agreement,</p> <p>13 CX 4045, the Data Exchange Agreement. I'm going to ask</p> <p>14 you -- you can take a look at any part of the agreement</p> <p>15 you care to. I'm going to ask you questions about</p> <p>16 paragraph 4.5, which begins on the very bottom of</p> <p>17 CX 4045-004.</p> <p>18 A. Okay. I'm on the page 4 of 13.</p> <p>19 Q. Yes.</p> <p>20 A. Okay.</p> <p>21 Q. It's paragraph 4.5. It begins at the very</p> <p>22 bottom of that page, Prohibition on Knowledge Transfer</p> <p>23 and DMS Access.</p> <p>24 A. Yes, I see and understand that.</p> <p>25 Q. What is this paragraph intended to apply to?</p>	<p style="text-align: right;">153</p> <p>1 Third-Party Communications. And my only purpose in</p> <p>2 showing you this paragraph -- let me let you read the</p> <p>3 paragraph. Then I'll propound my question.</p> <p>4 A. 4.2 is the one being referred to?</p> <p>5 Q. Yes.</p> <p>6 A. Yes.</p> <p>7 Q. We had spoken earlier about a provision that</p> <p>8 the parties entered into where they would each have to</p> <p>9 seek approval and gain approval from the other firm in</p> <p>10 order to issue press releases. And I just thought I</p> <p>11 would show this to you, since we hadn't had the</p> <p>12 document in front of us at the time we were talking</p> <p>13 about, and ask you whether this is the provision that</p> <p>14 you understood me to be asking about when I asked you</p> <p>15 about whether the agreement contained such a provision.</p> <p>16 A. I'm afraid I'm a little lost. Could you</p> <p>17 reiterate?</p> <p>18 Q. Could you look at 4.2, the last sentence. It's</p> <p>19 a sentence that runs onto the next page, and it begins</p> <p>20 three lines up from the bottom of the page. And it</p> <p>21 begins, "Prior to the dissemination of any written</p> <p>22 press releases or market communications by either</p> <p>23 party". And I'm going to skip over to the end of the</p> <p>24 provision on the very top of 4045-004, "such press</p> <p>25 releases or market communications shall be tendered to</p>

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1 the other party for its review and approval."

2 A. Yes, I see that.

3 **Q. Are you familiar with it?**

4 A. Frankly, not. These documents, I was not
5 involved at all in their preparation. I authorized
6 them to be done so that the project could be finished
7 and that we could get CDK to stop hacking into our
8 systems. But as far as the content and the details
9 inside these contracts, I was not personally familiar
10 with -- I was not involved at all in the drafting, and
11 therefore, I can't claim or disclaim knowledge about
12 any particular piece. They got the job done. The
13 mission was accomplished. And I look back on it as a
14 successful effort.

15 **Q. You know, just sitting back and not, you know,**
16 **staring at this document, did you have an**
17 **understanding -- this was signed in February of 2018.**
18 **So did you have an understanding in the February of**
19 **2015 time period that you had an agreement with CDK**
20 **whereby you would both have to review, say, a press**
21 **release before you put it out talking about the**
22 **agreements that you had entered into?**

23 A. Frankly, I was not thinking very much about
24 that at all. I had moved on mentally from this project
25 at the time these documents were drafted.

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1 **Q. Were there any press releases that Reynolds**
2 **sent out about these agreements?**

3 A. I'm sorry, I don't have any knowledge in that
4 regard. We may or may not have. I don't know.

5 **Q. And the same question for CDK. Did CDK send**
6 **out any press releases about the agreements?**

7 A. I'm sorry, I don't know.

8 **Q. Did you come to have an understanding during**
9 **the time period leading up to these agreements whether**
10 **CDK had a message that they wanted to communicate to**
11 **the market about these agreements?**

12 A. I'm sorry, I have no perception of even
13 thinking about that. I was on to the next project.

14 **Q. Did you ever become aware of any exchanges of**
15 **documents between Reynolds and CDK exploring whether to**
16 **send communications to the Reynolds sales force?**

17 A. I'm sorry, I'm not aware of any such thing.
18 Again, I was not active in this process. I had already
19 moved on.

20 (A recess was taken.)

21 BY MR. ABRAHAMSEN:

22 **Q. I would like to show -- Mr. Brockman, I would**
23 **like to show you what we've marked as CX 4176 and ask**
24 **you to take a look at it. It's a new exhibit. CX 4176**
25 **has Bates REYCID0046837. I would ask you to take a**

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1 look at it. CX 4176 is an e-mail from Mr. Thornhill to
2 Mr. Schaefer and Mr. Martin dated February 26, 2015.
3 It's an e-mail with an attachment.

4 A. Yes.

5 **Q. CX 4176 is entitled -- well, the subject matter**
6 **of the cover e-mail, I should say, is Revised**
7 **One-Pager - CDK. Were you familiar with the drafting**
8 **of this document?**

9 A. Not at all.

10 **Q. Have you seen this document before?**

11 A. Frankly, not. I don't believe I have.

12 **Q. Putting aside the actual physical document**
13 **itself, were you aware of any undertakings at Reynolds**
14 **to draft up a document to -- so people could**
15 **communicate to various audiences what the CDK/Reynolds**
16 **agreement contained?**

17 A. I don't believe that I was. Again, this is now
18 substantially after the whole project got done
19 contractually, and I'm even further away from what's
20 happening in this area. All I know is that the general
21 reports are, yep, it's working; yep, CDK is doing what
22 they promised they would do. And therefore, not a
23 problem. I'm on to the next subject.

24 **Q. I appreciate that, and I'm just going to use**
25 **the document sort of as a way to ask you questions, but**

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1 I'm appreciative of the fact that you haven't seen it.
2 You are not familiar with it. And I understand your
3 explanation and I will try not to belabor this line of
4 questioning, but I would like to ask you a couple
5 questions based on the document even though you are not
6 familiar with it.

7 A. Sure.

8 **Q. I would ask you to turn to CX 4176-004. And**
9 **the first box on the page has in the far right-hand**
10 **column Scenario: Media outlets find out about the**
11 **CDK/Reynolds agreement.**

12 A. Yes.

13 **Q. To your knowledge, were the agreements ever the**
14 **subject of a media inquiry?**

15 A. I don't recall specifically other than I think
16 that there was something. But exactly how big it was
17 and what all it contained, I don't remember if I ever
18 saw it.

19 **Q. Were you asked to give a statement to the**
20 **media?**

21 A. No.

22 **Q. The response as indicated in this same box is**
23 **that ensure CDK and Reynolds market message align. Do**
24 **you know what that's a reference to?**

25 A. Other than what it says in that sentence, no.

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1 It says what it says. I agree that what it says was
2 appropriate, but I had no more specific knowledge about
3 it.

4 **Q. Did you ever have any communications in this**
5 **February 2015 time period with anyone at CDK about**
6 **aligning the market messaging?**

7 A. I don't believe so.

8 **Q. Did you have any discussions with anyone at**
9 **Reynolds about ensuring that the CDK and Reynolds**
10 **market message aligned?**

11 A. No, not that I recall. And I'm sorry, but
12 February 15th was -- February three years ago or four
13 years ago was a hundred years ago as far as I'm
14 concerned.

15 **Q. The next bullet down says, "Access to DMS by**
16 **dealers' DMS provider only." Do you know what that's a**
17 **reference to?**

18 A. Okay, this is the second block down?

19 **Q. The first block, second bullet down under**
20 **Response.**

21 A. Okay. Yes, I see that.

22 **Q. Is that a reference to the Reynolds position**
23 **that only people who have an RCI agreement are allowed**
24 **to access the Reynolds DMS?**

25 A. That's correct. That's in line with our

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1 long-standing policy.

2 **Q. Was it your understanding that the position at**
3 **Reynolds was that if the media were to contact you,**
4 **that they would ensure that CDK and Reynolds were**
5 **aligned on that market message?**

6 A. Again, I'm not clear exactly who was doing what
7 here. I don't disagree with what was being done, but
8 it was, as far as I was concerned, it was
9 administration-type kind of issues about a project that
10 had already been done.

11 **Q. This document is dated February 26, 2015. My**
12 **understanding is that the contracts were signed on**
13 **February 18, 2015. So this document is eight days**
14 **after the contracts were signed. But I wanted to ask**
15 **you, you said that you had kind of finished with this**
16 **project earlier. Give me your best estimation of how**
17 **much earlier before this February 2015 time period**
18 **where you would consider yourself engaged in the**
19 **negotiation of these contracts.**

20 A. Unfortunately, I don't have a timeline of what
21 happened when, but I believe that I was detaching as
22 the final agreements were being drafted because the
23 reports I got back from principally Bob Schaefer was
24 all was in order, things were proceeding according to
25 our expectations and that my input was not necessary

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1 anymore.

2 **Q. We looked earlier today at an e-mail exchange**
3 **you had with Mr. Anenen which was sort of, I believe,**
4 **in late June, early July of 2014. So with that as a**
5 **milepost and February of 2015 when the agreements were**
6 **signed, can you give me any idea of where in that time**
7 **period you became less engaged in the actual**
8 **negotiations of the contracts?**

9 A. I would say probably -- I would have periodic,
10 not scheduled discussions with Bob Schaefer about
11 what's going on. And one of my questions would be were
12 the contract negotiations reaching final stages. So it
13 would be whenever that was happening date-wise. That
14 would be when I was beginning to detach and move on to
15 the next project.

16 **Q. In terms of details about drafting the**
17 **contracts, what issues were you engaged on in that time**
18 **period after the July -- e-mails in July and the**
19 **signing of the contract? Were there issues that came**
20 **to your attention that needed to be resolved?**

21 A. Not that I recall.

22 **Q. Where is your office located?**

23 A. I live at home.

24 **Q. I live at home too.**

25 A. To describe how my life works is I get up in

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1 the morning and I have a big blue bathrobe, terrycloth.
2 I take the dog out for a walk. I get a cup of coffee
3 and some toast, I sit at my desk and the day commences.
4 Much to my wife's unhappiness, many times noontime
5 comes and I'm still in the terrycloth bathrobe.

6 **Q. You'll be surprised to learn that was not**
7 **exactly the information I was driving at, but I**
8 **appreciate your answer. My next question was going to**
9 **be whether you worked in physical proximity with**
10 **Mr. Schaefer. That was the question I was going to get**
11 **to.**

12 A. He is in Dayton, Ohio. I'm in Houston. We
13 communicate typically by Skype when necessary. But he
14 is a very experienced person, been around a long time,
15 knows the waterfront, if you will. So I don't have
16 extensive communications with him. From an
17 organizational standpoint, I have 16 direct reports,
18 which is not right, but it is.

19 **Q. Is Mr. Schaefer a direct report?**

20 A. Yes.

21 **Q. So we obviously know from reading the documents**
22 **that you do use e-mail to communicate with Mr. Schaefer**
23 **and many other people. And you said you use Skype.**
24 **Any other forms of communication with Mr. Schaefer?**

25 A. Occasionally there will be a telephone call

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1 when he's not in a place where he can access Skype.

2 **Q. So during this time period when the contracts**
3 **were being negotiated and so on, give me an estimate of**
4 **how frequently you are in contact with Mr. Schaefer**
5 **with regard to these contracts. And I'm sure it**
6 **varied, but just give me an estimate.**

7 A. Probably at that stage I would have been in
8 contact with him once a week, once every ten days, two
9 weeks.

10 **Q. Let me ask you to refer back to the exhibit in**
11 **front of you, CX 4176, and ask you to take a look at**
12 **the first box on the top of CX 4176-005.**

13 A. This is the top box?

14 **Q. Yes, sir.**

15 A. Yes.

16 **Q. My first question is under Scenario, it says,**
17 **"New third-party vendor contacts CDK." How are**
18 **third-party vendors dealt with in the contracts we**
19 **looked at earlier?**

20 A. Again, this was the orderly stand down period,
21 and as I recall, they got an announcement from CDK or
22 actually from DMI that they were no longer going to be
23 offering their Reynolds and Reynolds hacking services
24 and that they directed them on to us to talk about what
25 they needed to have done.

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1 And I think it's important to point out that in
2 many or most cases, batch-type kind of data can be
3 handled by the dealer. They can run reports. They can
4 point those reports out to a PC and they can transmit
5 them into their third party, and they get all the data
6 and it works just fine. The issue is that somebody has
7 got to remember to do it every day. It's not one of
8 these things where you can just kind of set your watch
9 and everything is going to happen hands-off.

10 And I would think some fair number of third
11 parties were really pretty small and they really could
12 get at what they wanted as far as getting dealership
13 data by having to dealer send it to them.

14 **Q. Right. My understanding is that for existing**
15 **DMI clients, they would have the choice -- once the**
16 **contracts were signed, they would have the choice of**
17 **either going into the RCI program if they wanted to**
18 **continue to get automated, the data in an automated**
19 **fashion. Or if they did not want to go to RCI, they**
20 **could manually send the data. Is my understanding**
21 **accurate?**

22 A. That's correct.

23 **Q. And my understanding is that some chose to go**
24 **into RCI and others chose not to go into RCI. Is that**
25 **your understanding?**

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1 A. That is correct.

2 **Q. Do you have any idea magnitude-wise how many**
3 **chose to go into RCI rather than not go into RCI?**

4 A. I don't have good information on that, but I do
5 know that it was some number. It was not just one or
6 two.

7 **Q. I'm sorry, some number that did what?**

8 A. Some number that actually elected to start
9 having their dealership customers print reports and
10 transmit them to the third party as opposed to being on
11 RCI.

12 **Q. CX 4176-005 talks about a scenario where**
13 **there's a new third-party vendor that contacts CDK. I**
14 **interpreted that as a new third-party vendor being a**
15 **vendor that hadn't already been subject -- had not**
16 **already been using DMI to integrate onto the Reynolds**
17 **system. Do you know whether the -- how the contracts**
18 **dealt with the situation where a brand new vendor would**
19 **go to CDK and ask for them to use their services?**

20 A. I don't know how the contracts addressed that
21 or if they addressed that, but I think what's stated
22 here is what actually happened in that if some new
23 third party shows up and wants to access data in
24 Reynolds' DMS systems, what happened here was that if
25 they talked to CDK, CDK forwarded them on over to us.

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1 **Q. What was your interpretation of the reference**
2 **in the fourth bullet which says "CDK and Reynolds agree**
3 **on the benefits of the dealers' DMS vendor providing**
4 **data"?**

5 A. Well, I think it is what it says it is, that
6 there are obvious advantages, one of which is that
7 using an automated fashion that all the data that's
8 supposed to be collected gets collected. Again, the
9 key to the dealership actually printing reports and
10 transmitting them to the third party, it requires
11 somebody that is diligent and will do it every day like
12 they are supposed to or every week or every month. And
13 one of the benefits of an RCI-type contract is that
14 personnel failure is removed from the equation.

15 **Q. The third bullet down talks about DMI**
16 **continuing to provide data cleansing, standardization**
17 **and aggregation services. Is that a reference to DMI**
18 **providing a subset of services that do not include**
19 **actually entering into the DMS, what you have referred**
20 **to as hacking?**

21 A. Yes, that's my understanding. And what they do
22 in those services I'm not aware of. That's not a
23 business that we pursued and therefore have had no
24 occasion to come to understand what's included. I
25 think probably one of the obvious ones is a process

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1 they call de-duplication. You end up with duplicate
2 pieces of data. And they have to have some software, I
3 think in some cases probably fairly sophisticated
4 software, that detect the presence of dupes and
5 actually have confidence enough where they can actually
6 combine them where all that happens automatically.

7 **Q. And does the third bullet saying that DMI will**
8 **continue to provide those services read in conjunction**
9 **with the fourth bullet that CDK and Reynolds agree on**
10 **the benefits of the dealers' DMS vendor providing data,**
11 **the recitation of the fact that CDK will be moving away**
12 **from its laissez-faire approach to third-party**
13 **integration on its DMS?**

14 A. I'm afraid I'm missing the point.

15 MR. ABRAHAMSEN: Why don't you re-read the
16 question, and then I'll probably end up rephrasing it.

17 (The record was read as requested.)

18 THE WITNESS: Sitting here reading it today
19 after the fact, I agree that it could be understood
20 that way. However, this particular document, I didn't
21 draft it. So I'm unfamiliar with it. I haven't seen
22 it. I have seen it for the first time today.

23 BY MR. ABRAHAMSEN:

24 **Q. And I appreciate you hanging with me through**
25 **these questions and letting me use that as a crutch to**

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1 ask you questions. Let me ask you to take a look at
2 CX 4182. CX 4182 bears Bates REYCID0675485.
3 Mr. Brockman, have you seen the document before?

4 A. I don't recall seeing this document ever
5 before.

6 **Q. It's entitled CDK Deal Information -**
7 **February 2015.**

8 **I would like you to turn to the third page of**
9 **the exhibit, which is CX 4182-003, and ask you to take**
10 **a look at the paragraphs -- there's two numbered**
11 **paragraphs under the heading that's underlined Key**
12 **Messages.**

13 A. Yes, I see those.

14 **Q. Then the first key message, I think we've**
15 **talked about the first sentence, "Reynolds has long led**
16 **the way in the battle on DMS security." When you talk**
17 **about DMS security, aside from keeping third party,**
18 **what you refer to as, hackers off the system, what**
19 **other security measures would you say Reynolds has led**
20 **the way on?**

21 A. Well, there's, for example, establishment of
22 user ID records inside the DMS system. One of the
23 things that we did that I have not heard anybody else
24 do it, since we also in most cases have the payroll
25 information, what we do is we look at the user ID, and

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1 before we declare it a valid employee, we go check the
2 payroll file, which is kind of simple but you know,
3 certainly a reasonable thing to do from a security
4 standpoint. And again, nobody else has done that that
5 we know of.

6 **Q. Would that help detect whether there is a**
7 **third-party integrator getting a user ID and password**
8 **from the DMS?**

9 A. It would certainly detect them being provided a
10 user ID and password. There is -- I believe that
11 software also double checks that there is not two
12 people connected to a single user ID. And again, the
13 name and user ID has to be a name in the payroll file.

14 **Q. So if somebody like Mr. Batista was given a**
15 **user ID and a password by a dealer to run an app on**
16 **their dealership's DMS, you would use that -- that**
17 **software would allow you to detect that Brown Chevrolet**
18 **does not have a Phil Batista as an employee? Is that**
19 **how it works?**

20 A. Exactly.

21 **Q. Let me ask you to look at -- and I appreciate**
22 **I'm just using this document as a crutch to ask my**
23 **questions because I know you haven't seen it and you**
24 **didn't write it. CX 4182-003 Key Messages sentence**
25 **numbered paragraph 1, second sentence, and I'll read**

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1 it: "In doing so, other DMS providers are finally
2 acknowledging that the fastest and correct way to move
3 data between parties is to have the DMS push the data."
4 Is the phrase "have the DMS push the data" a reference
5 to what RCI does?

6 A. Yes. RCI is typically, and it could be in all
7 cases, set up to actually wake up and perform program
8 instructions about what data to get, where to send it
9 to, from which dealership. And I think in some cases
10 even the hour of the day is specified in the RCI
11 program.

12 **Q. The first clause in this sentence says "In**
13 **doing so, other DMS providers are finally**
14 **acknowledging". What is the reference in your**
15 **interpretation of the other DMS providers?**

16 A. Other than what it says, other DMS providers.

17 **Q. In this February 2015 time period, obviously**
18 **you had -- we have been talking about CDK and its**
19 **position on data security. Were you aware of any DMS**
20 **provider other than CDK, perhaps, that was**
21 **acknowledging that the safest way to move data is to**
22 **have the DMS push the data?**

23 A. That would be the only one that I would be
24 aware of. Quite likely, some of the more minor DMS
25 providers had also adopted it, but I'm not aware of

<p style="text-align: right;">170</p> <p>1 that.</p> <p>2 Q. And the second numbered paragraph, the first</p> <p>3 sentence states, "CDK is finally acknowledging that</p> <p>4 they need to move forward with securing their DMS."</p> <p>5 And "securing their DMS" is underlined. What is your</p> <p>6 interpretation of that?</p> <p>7 A. That's our belief, that what they are doing is</p> <p>8 that they are migrating to what we have been doing all</p> <p>9 along.</p> <p>10 Q. What you had been doing all along with regard</p> <p>11 to securing your DMS?</p> <p>12 A. Yes.</p> <p>13 Q. And would that include adopting a position</p> <p>14 where they would not permit third-party integrators to</p> <p>15 get onto their DMS?</p> <p>16 A. Yes.</p> <p>17 Q. The next paragraph down is entitled Important</p> <p>18 to Note. It's underlined. I would ask you to read the</p> <p>19 paragraph and then I'll ask my questions.</p> <p>20 A. Yes.</p> <p>21 Q. Let me give you my interpretation of what the</p> <p>22 paragraph is saying and then you correct me if I have</p> <p>23 misinterpreted it. It seems like now that the</p> <p>24 contracts have been signed, CDK is going to provide</p> <p>25 Reynolds with the identification of its clients that</p>	<p style="text-align: right;">172</p> <p>1 what's going to happen is as we finally turn loose this</p> <p>2 next security update, there's going to be some people</p> <p>3 that won't work.</p> <p>4 And the fact that this even has to be said is</p> <p>5 kind of amazing because it is so clear that if you are</p> <p>6 not on the list, if we don't know that you are a CDK</p> <p>7 customer, certainly they will get the full force of the</p> <p>8 security changes that are impending.</p> <p>9 Q. And then there's a reference in the next</p> <p>10 sentence that we will know immediately whether these</p> <p>11 parties are supposed to be broken or not. And I</p> <p>12 interpret that to mean that you don't intend to disrupt</p> <p>13 the CDK clients but that if somebody is using an</p> <p>14 integrator that you are not protecting, they are</p> <p>15 supposed to be blocked. Am I interpreting it</p> <p>16 correctly?</p> <p>17 A. Absolutely correct.</p> <p>18 Q. So --</p> <p>19 A. And we have no knowledge as to how many, who,</p> <p>20 because an exploit that gets past or attempts to get</p> <p>21 past a security change, there's no way for us to know</p> <p>22 until we apply a security change and then somebody</p> <p>23 hollers. That's when we know that there's somebody new</p> <p>24 that we didn't know about before. And hopefully at</p> <p>25 this point there should not have been very much of</p>
<p style="text-align: right;">171</p> <p>1 its integrating onto the Reynolds system. And</p> <p>2 following that, once Reynolds receives those and is</p> <p>3 able to protect those, Reynolds is going to put out its</p> <p>4 security update, a new security update; is that</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. And the second-to-last sentence ends with the</p> <p>8 clause "meaning a number of users will be broken."</p> <p>9 What is your interpretation of that?</p> <p>10 A. Well, this goes back to the peaceful stand down</p> <p>11 process. Prior to that we had notified CDK that we had</p> <p>12 a number of security changes that we had been holding</p> <p>13 off releasing, but if they didn't finally agree to get</p> <p>14 out of our boxes, quit hacking us, we were going to</p> <p>15 turn loose those security changes which were going to</p> <p>16 make basically all of CDK inoperative as far as</p> <p>17 extracting data out of Reynolds' machines.</p> <p>18 Well, once the contract was done, the agreement</p> <p>19 in the stand down was that it would be an orderly stand</p> <p>20 down and there would be no stand downs that would cause</p> <p>21 trouble, unhappiness on the part of dealers. Well, in</p> <p>22 order to do that, we have to know who because we don't</p> <p>23 know who all the ADP customers are. We don't know who</p> <p>24 all their third parties are. So what we are talking</p> <p>25 about here is that if we don't get the names, then</p>	<p style="text-align: right;">173</p> <p>1 that, but we don't know.</p> <p>2 Q. Well, so what happened? At this point, as I</p> <p>3 understand it, you have -- you are protecting some SIS</p> <p>4 customers under their stand down, and you are</p> <p>5 protecting the CDK customers under their stand down,</p> <p>6 and then you put in the security change, as I</p> <p>7 understand it. And so what happened? Were there</p> <p>8 people who were disrupted?</p> <p>9 A. The answer to that is I don't know of any. I</p> <p>10 just don't know whether there were, whether there were</p> <p>11 not. I do know that there was -- I don't recall any</p> <p>12 serious commotions. Whatever it was, I don't think</p> <p>13 there were very many.</p> <p>14 Q. So did there come to your attention any angry</p> <p>15 phone calls or letters or other forms of communication</p> <p>16 from people that were being disrupted as a result of</p> <p>17 your security enhancements after this March of 2015</p> <p>18 time period?</p> <p>19 A. Not that I'm aware. Of course, since then</p> <p>20 what's happened has been relatively quiet. Not</p> <p>21 completely, but relatively. Nothing major. But as</p> <p>22 security changes go on, continue to get improved, I'm</p> <p>23 sure that we'll find more. Where there is one hacker</p> <p>24 there, there are ten more behind them.</p> <p>25 Q. Just so the record is clear, I followed your</p>

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1 answer to the question. The question was very broad,
2 so I'm going to break it down into two questions as
3 between app providers and OEMs just so the record is
4 clear about this.

5 Following this March 2015 time period, were you
6 contacted by any OEMs because they had had applications
7 that they wanted to use that were disrupted?

8 A. Personally, I received no such contact.
9 Whether or not someone else in the organization did,
10 I'm not aware. But I'm quite sure that I did not.

11 Q. And with regard to app providers in this time
12 period following March of 2015, were you contacted by
13 any app providers with regard to anger over disruption
14 of their apps?

15 A. Not me personally.

16 Q. You mentioned in an earlier answer that, I
17 forget the exact phrase you used, but you noted that
18 CDK had had a number of CEOs or words to that effect.
19 We have been speaking today and yesterday about
20 Mr. Anenen. Who are the other CEOs of CDK in addition
21 to Mr. Anenen that you are aware of?

22 A. Mr. Anenen was the last true CEO because he is
23 like a 37-year veteran of the business and probably the
24 longest serving veteran CEO. And probably I'm the only
25 one that has got more than he. I have got 49 years.

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1 But I can't recite the names to you. The most
2 recent was a gentleman that was president of Intel.
3 And he was dismissed from Intel for an inappropriate
4 relationship. And his new job is CEO of CDK.

5 And there were two others besides him prior.
6 And this is caused by the fact that CDK is controlled
7 by a group of hedge funds. Hedge funds, it's my
8 understanding that they hold like 60 percent of the
9 stock of CDK. And they are very impatient for
10 improvement in operations and the profits to be -- to
11 come about inside CDK. So therefore, they appear to be
12 very quick on the trigger to turn over CEOs in seeking,
13 you know, improved stock valuations so they can
14 ultimately sell the stock that they hold today and make
15 a profit and get on to the next deal. I'm sure it's
16 been disappointing to the hedge fund folks that it has
17 not already been able to occur.

18 And this is all a matter of public record and
19 probably is the only part of CDK that I pay attention
20 to. I'm always curious as to who my counterpart is.

21 Q. So we went through some -- we talked about some
22 conversations you had with Mr. Anenen. Telephone
23 conversations, I believe. Did you also meet with him
24 at NADA?

25 A. Briefly. NADA is, you shake hands with old

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1 friends and old enemies, but there's no serious
2 conversation that takes place. There's too much else
3 going on.

4 Q. So you had serious conversations with
5 Mr. Anenen over the phone, the ones we spoke about?

6 A. Yes.

7 Q. And did you have any conversations with
8 Mr. Anenen after the contracts were signed that we
9 looked at?

10 A. No. As a matter of fact, the only interaction
11 I have had with him is at the big national auto dealers
12 association convention. He was no longer with CDK, and
13 he stopped past just to say hello. He's a nice guy.

14 Q. To what extent have you had conversations with
15 the CEOs at CDK who have followed Mr. Anenen?

16 A. None.

17 Q. You have never spoken with them on the phone?

18 A. No. I don't exist as far as they are
19 concerned. Yes. And I have not -- I got other things
20 better to do than to seek out a conversation with them.

21 Q. And just to make sure the record is clear on
22 this, have you had occasion to meet with them
23 informally at an industry conference?

24 A. As far as I know, the answer is no. However,
25 what happens is that at NADA people kind of travel in

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1 packs of two, three, four, five, six, seven, eight, ten
2 people. And they come by and I would not recognize
3 them by face. And they don't announce themselves.
4 They don't have a sign on them that says I'm CEO of
5 CDK. So I may possibly have seen some but not
6 understood who they were.

7 (A recess was taken.)

8 BY MR. ABRAHAMSEN:

9 Q. Mr. Brockman, we were talking yesterday, I
10 believe it was, about how the OEMs need to certify a
11 DMS provider in order for the DMS provider to have
12 their franchise dealers as using the DMS. Do you
13 recall that?

14 A. Yes.

15 Q. And we talked about decertification as
16 something that would be very, very bad for the DMS
17 provider if an OEM were to do that.

18 A. Disastrous.

19 Q. Short of decertification, is there other things
20 that OEMs can do to the DMS to sort of influence how a
21 DMS undertakes certain policies?

22 A. Yes. Probably one of the ones that we see the
23 most often is -- and we'll say that Ford Motor Company
24 has a new initiative regarding a service and how that's
25 handled from a computer standpoint. And what they do

<p style="text-align: right;">178</p> <p>1 is, they kind of separate it into multiple pieces. And</p> <p>2 there will be mostly old pieces but then some new</p> <p>3 pieces. And let's say that the new piece is a new</p> <p>4 interface where a dealership that uses the right DMS</p> <p>5 with the right certifications, they can type in a</p> <p>6 vehicle identification number and get an instant</p> <p>7 readback of all the warranty claims that's been made on</p> <p>8 that vehicle so that you can see if, say, for instance</p> <p>9 another dealership fixed something under warranty, but</p> <p>10 they really didn't fix it. So you have the right to</p> <p>11 kick over to them and say, look, you guys fix it.</p> <p>12 Well, if you are not on the good guy list as a</p> <p>13 DMS provider, you may not get access to this special</p> <p>14 new facility that Ford is making available, which is</p> <p>15 very, very worthwhile and important to dealership</p> <p>16 customers. So therefore, you are in the</p> <p>17 never-neverland where you are not decertified, but</p> <p>18 again you are not quite fully certified either. And</p> <p>19 larger dealerships will be very, very sensitive to</p> <p>20 this, which is we have a lot of customers in that</p> <p>21 category.</p> <p>22 And so it even comes down to dates of approval.</p> <p>23 If we don't meet their schedule, their desired schedule</p> <p>24 as far as the creation of the additional facilities</p> <p>25 inside the factory communications, they'll say, okay,</p>	<p style="text-align: right;">180</p> <p>1 situation forever, but that's the opening expectation.</p> <p>2 Q. And in this particular instance, you did reach</p> <p>3 an agreement with CDK, and the anger that would have</p> <p>4 been directed to the OEMs was avoided, presumably?</p> <p>5 A. Correct.</p> <p>6 Q. Let me ask you to take a look at an Exhibit</p> <p>7 CX 4038. CX 4038 has Bates REYCID0577749. It's an</p> <p>8 e-mail with three pages of attachments. The subject</p> <p>9 line is 6240's.</p> <p>10 A. Well, I conclude that we've got a senior vice</p> <p>11 president of sales that writes pretty good.</p> <p>12 Q. What do you conclude that based on?</p> <p>13 A. Well, short paragraphs, to begin with.</p> <p>14 Q. You said vice president of sales, and you are</p> <p>15 referring to Keith Hill; is that correct?</p> <p>16 A. Yes, that's correct.</p> <p>17 Q. Have you seen this document before?</p> <p>18 A. No, I have not.</p> <p>19 Q. With your indulgence, I'm going to still use as</p> <p>20 an effort to ask you to interpret certain things in it.</p> <p>21 In his cover e-mail, he talks about some of the</p> <p>22 subjects we have been talking about in the last two</p> <p>23 days, data security, and he uses the phrase in the</p> <p>24 sentence "unattended automated access."</p> <p>25 A. Yes.</p>
<p style="text-align: right;">179</p> <p>1 you are late but we are still going to certify you, but</p> <p>2 we are not going to give you that until next March.</p> <p>3 That's dirty pool, but they are the guys. And</p> <p>4 we end up having to work programmers nights and</p> <p>5 weekends to meet their crazy schedule as far as when</p> <p>6 something is supposed to be built, tested, implemented</p> <p>7 in the field by their by-god date.</p> <p>8 Q. And I'm curious, you have mentioned several</p> <p>9 times in the last two days that you contemplated</p> <p>10 throwing the switch on CDK and blocking their apps,</p> <p>11 shutting them down. Was there any concern that if,</p> <p>12 say, you shut down CDK because you didn't have an</p> <p>13 agreement with them and caused disruption to a lot of</p> <p>14 dealers' use of CDK, the products that CDK was</p> <p>15 integrating onto their DMSes, was there any fear that</p> <p>16 OEMs would be angered by this also, the dealers would</p> <p>17 complain to the OEMs and that the OEMs would take</p> <p>18 actions adverse to Reynolds because of the blockage</p> <p>19 that had taken place?</p> <p>20 A. That's always a possibility. But the hopes are</p> <p>21 in any kind of situation such as we went through CDK</p> <p>22 that cooler heads would prevail and a reasonable</p> <p>23 situation would occur as opposed to a disastrous one.</p> <p>24 And historically, that's always been the case. Now,</p> <p>25 you can't say that's going to be that way on every</p>	<p style="text-align: right;">181</p> <p>1 Q. How do you interpret that?</p> <p>2 A. Well, there the dividing characteristic is</p> <p>3 unattended. And the reason for that is and that's my</p> <p>4 interpretation from a liability standpoint is that if a</p> <p>5 dealer runs a report and then turns around and e-mails</p> <p>6 that to a third party, that's perfectly within his</p> <p>7 rights to do that, and there's nothing incorrect about</p> <p>8 that. But it also means that if something goes wrong</p> <p>9 from a data breach standpoint, it's his problem. It's</p> <p>10 not our problem.</p> <p>11 So the unattended access just crosses the line</p> <p>12 to what happens over and over again, and that's an</p> <p>13 unattended report will be set up and it will run, and</p> <p>14 it will run faithfully every day, every week, every</p> <p>15 month, and nobody knows it's running. The actual</p> <p>16 running of an unattended batch job creating a data set</p> <p>17 that would be used outside the dealership, there's no</p> <p>18 scream of flashing lights that says we are now</p> <p>19 currently extracting payroll data.</p> <p>20 But the point is that if the dealer decides to</p> <p>21 extract data out of his system and then put it in his</p> <p>22 PC and transmit it to somebody, that's his problem.</p> <p>23 When it's automatic and we allow that to occur, all of</p> <p>24 a sudden we start getting our hands in the liability</p> <p>25 grease.</p>

<p style="text-align: right;">182</p> <p>1 Q. So firms like DMI, IntegraLink, they were doing 2 unattended automated access to Reynolds' DMSes? 3 A. Correct. 4 Q. Is there -- I'm just trying to figure out in my 5 mind whether unattended and automated are redundant. 6 Can there be automated access to a DMS that doesn't 7 inflict liability on Reynolds? 8 A. The only one that I can conceive of -- and this 9 is a theoretical answer. I don't know that it exists 10 in real life would be vehicle data used to populate 11 websites, because vehicle data we perceive to be -- 12 since it's available on every dealership's website to 13 begin with, this is basically public data, and 14 therefore -- but also it changes all the time. So 15 therefore, an automated unattended process for 16 consolidating and transmitting vehicle inventory data, 17 there is no liability associated with that. But 18 anything that has name, rank, serial number, you know, 19 personal information, PII or NPPI, that has tremendous 20 liabilities associated with that, the likes of which we 21 have not begun to see. 22 Q. To your knowledge, did Reynolds send out 23 talking points to the sales staff so that they would be 24 able to address the security issues after contracts 25 were signed?</p>	<p style="text-align: right;">184</p> <p>1 marks, and the last hash mark talks about DMI and 2 IntegraLink, and the last sentence of that hash mark 3 says, "They now see the risk inherent in facilitating 4 unattended automated data extraction." Do you 5 interpret that as the risk inherent in the data being 6 extracted and then getting into the wrong hands? 7 A. Yes. 8 Q. The bullet above that says "CDK and Reynolds 9 have partnered together to push data securely. Thus, 10 85 percent of the market is now in agreement with our 11 stance." What do you interpret that to mean? 12 A. Well, I interpret that to mean that as 13 knowledge of the availability of the 3PA program has 14 now become pretty widespread, and it's now obvious that 15 CDK has changed their feeling as far as data security 16 is concerned to no longer be laissez-faire but to 17 actually have a more secure policy. 18 Q. Do you interpret that to extend to both CDK 19 agreeing to use RCI for its apps and also to restrict 20 third-party integration on its own system? 21 A. I'm not focusing on what they do as far as 22 their own system is concerned, but the fact that they 23 understand our position and they are not going to try 24 and hack us. 25 Q. Let me ask you to take a look at Exhibit</p>
<p style="text-align: right;">183</p> <p>1 A. I think that's what this document is all about. 2 Q. Were you aware at the time -- this is sort of 3 the March 2015 time period. Were you aware that these 4 instructions were being sent out to the sales staff? 5 A. No. And I would have no occasion to be aware, 6 because Keith Hill is a senior VP of sales. He is an 7 interesting person in that he was a mathematician, a 8 math major in college, but he also was a high school 9 football coach. And so you have the personnel planning 10 capability he has because, of course, high school 11 football is all about that, deciding, you know, who can 12 start, who can play, who does what position, who gets 13 benched because of being unmannerly with a mathematics 14 background which means that he understands computer 15 systems. While he's not a software person, he 16 understands from a principle standpoint how the guts of 17 the things are supposed to work. 18 Q. Is he a direct report to you? 19 A. Yes. And I might add a very capable direct 20 report. As a result, I don't spend a lot of time with 21 him. My theory as far as personnel management is 22 concerned is when they can do as good as I can do it, I 23 need to let them do it. 24 Q. Let me ask you to flip to the second page of 25 the exhibit, CX 4038-002. And there's a series of hash</p>	<p style="text-align: right;">185</p> <p>1 CX 4459. CX 4459 bears Bates REYCID0186574. This is 2 an e-mail dated November 21, 2016 from Tommy Barras to 3 Mr. Schaefer and Mr. Brockman. Who is Mr. Barras? 4 A. He is an executive VP of software development. 5 Q. Is he a direct report to you? 6 A. Yes. 7 Q. Did he -- was he working at Reynolds when UCS 8 acquired Reynolds? 9 A. No. He is originally a UCSer. He and I have 10 worked together probably 48, 49 years. 11 Q. And he's been doing software development with 12 you in that whole time period? 13 A. Yes. 14 Q. In the body of his e-mail to you at the top of 15 the first page of CX 4459, the first word in the 16 sentence is S-Y-S-C-H-E-C-K. What is that? 17 A. Syscheck. I hope you'll bear with me because 18 some of the explanation of necessity has got to be a 19 little technical. The operating system that the DMS is 20 built around is what's called a multi-user operating 21 system. And what that means is that if you have a 22 system that has 100 PCs attached to it, each one of 23 those is a separate user as far as the operating system 24 is concerned. And the operating system, to the extent 25 that it is set up that way, can handle 100 different</p>

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1 users pretty much simultaneously. Well, they are not
2 exactly simultaneously. They are kind of close. Every
3 minute of computer power that's available, it's used by
4 many different users of the 100 that are out there.

5 Now, that's really pretty cool except for the
6 fact that people like in the accounting department that
7 have big end-of-month reports they have to create,
8 batch reports are very different in their usage
9 characteristics. If you have a terminal-based
10 application, somebody that uses a terminal and then
11 they won't, and that frees up computer power for all of
12 the rest of the folks. Even if you have five or six
13 people, they are not -- each one of them isn't getting
14 that big a bite of computer power.

15 But in the accounting world, we have big batch
16 programs that run at the end of the month. Think of it
17 like a machine gun. They just load in this infinite
18 supply of ammunition and they take the trigger down and
19 it just goes with no break. And what that does is you
20 can actually -- not theoretically, but it actually
21 happens in practice where the accounting department
22 with six or seven users can suck up all the computer
23 power, which means people that run terminal
24 applications like parts invoices or service repair
25 orders or service invoices, they have to wait.

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1 And this is a logic issue that is a little hard
2 to get around, but we devised Syscheck. And what
3 happens is Syscheck is a dipstick into the computer
4 usage, and it knows -- you can dipstick and say, okay,
5 it's 85 percent consumed or 90 percent or 50 percent,
6 but when it gets up fairly high, and I would say
7 probably 85 or 90, it's smart enough that it suspends
8 the batch programs and lets the other 90 users in the
9 pile, it will get their answers quickly. Because the
10 transaction base, what you hate is when you enter a
11 bunch of data entry, hit the button and then you got to
12 wait.

13 And of course, what that then leads to is users
14 accuse the DMS provider of a defective system, you are
15 forcing us to buy a bigger computer. And our only
16 defense now, which is a pretty good defense, we turn on
17 Syscheck and people that are wanting to do something,
18 if the computer system is overloaded, they get a
19 message on their screen that says, I'm sorry, the
20 accounting department is doing you in. Anyway, that's
21 what Syscheck is all about.

22 **Q. So what is the reference in that same sentence**
23 **to the AUR exemption?**

24 A. That one I'm having a little difficulty with
25 what AUR is. I think it had something to do with where

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1 we basically shut down batch reports that are consuming
2 computer time with the indication that if we want to
3 run this thing, you've got to do it at night.

4 Now, interestingly enough, all this sometimes
5 results in a power play between departments in that the
6 accounting folks will raise up and beat their chests
7 and say you guys don't let us run our reports all day
8 whenever we want to run, tough luck if payroll doesn't
9 get run on time. And everybody gets all shaky about
10 that. But that's the wrong answer.

11 The right answer is that the transaction-based
12 customers need to have as close as we can get to
13 instant response time because those people are
14 profit-producing people. The dealership, finance
15 managers, service managers, they need to have the
16 capability to get their work done. And the accounting
17 folks need to wait. And I don't publicize my feelings
18 on that widely, but I mean, that's the truth.

19 (A recess was taken.)

20 BY MR. ABRAHAMSEN:

21 **Q. Let me show you an exhibit we've marked as**
22 **CX 4420 and ask you to take a look at it. CX 4420 has**
23 **Bates REYCID0186518. The exhibit is an e-mail from**
24 **Mr. Schaefer to Mr. Brockman in November 2016. And the**
25 **subject of the document is Stone Eagle Request For**

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1 **Changes. Mr. Brockman, who is Stone Eagle?**

2 A. Stone Eagle is a third party that specializes
3 in analysis of vehicle sales and more especially
4 vehicle financing and aftermarket sales. And they get
5 information on car sales, quote, deals. A deal is what
6 we -- a term we use to apply to the facts of the whole
7 transaction and the paperwork. The whole transaction,
8 which is kept in a file folder. And that's what Stone
9 Eagle wants from us in terms of interface that they
10 want all the finance deals for a month. And then they
11 go run all their analysis programs and create nice bar
12 charts and graphs and that sort of thing so that the
13 dealership will understand how well they are doing in
14 that area. And specifically, they'll understand by
15 person, by finance manager who is doing what as opposed
16 to looking at the overall department and saying, yes,
17 it's good or bad or whatever. It's specific
18 individuals.

19 **Q. In the e-mail that's in the middle of the first**
20 **page of this exhibit, there's an e-mail from**
21 **Mr. Schaefer to you dated March 15, 2016, and the first**
22 **sentence of the e-mail says, "Stone Eagle executes this**
23 **process today using their interface." What interface**
24 **is being referred to in that sentence?**

25 A. Stone Eagle has been a customer that's like an

<p style="text-align: right;">190</p> <p>1 RCI customer, but it predates that. They are a very 2 mature company. They have been around a long time. 3 And what's happening here is that we are saying, look, 4 you got to go forward to the RCI process. They don't 5 particularly want to do that because it involves them 6 getting involved with programming, creating a new 7 interface from the data that they want. Their old 8 stuff, as far as they are concerned, works perfectly 9 fine. But we've said that the old process is dying. 10 You got to go to the standard process. And they are 11 dragging their feet, frankly. As a matter of fact, 12 they were the worst that exhibited dragging their feet. 13 They didn't say no. They just couldn't get it done. 14 We talked to them and they would give us a new 15 anticipated deadline, and we would go away and come 16 back when they missed the deadline. And that had been 17 going on for literally a couple of years. Other than 18 that, they are nice people. They pay their bills. 19 They are not complainers. 20 And in this particular situation, they figured 21 out that the RCI interface that we had prepared for 22 them, they had left out the issue where there is a deal 23 done on paperwork and electronically, but it got 24 unwound. In other words, it never actually happened, 25 yet the data was all recorded. And as far as the data</p>	<p style="text-align: right;">192</p> <p>1 was -- we were concerned that it was an oddball. 2 Whenever things are oddball, nothing good comes out of 3 that. 4 Q. Let me ask you to take a look at CX 4463. 5 CX 4463 has Bates REYCID0265394. It's an e-mail dated 6 August 1, 2017 from Mr. Barras to Mr. Brockman on the 7 top. And it's a series of e-mails that follow. 8 A. Yes. 9 Q. Mr. Brockman, in the first e-mail in the 10 exhibit, the top one -- the top one on the first page 11 of CX 4463, the second paragraph states, "Stone Eagle 12 exemptions go beyond Hendrick. Third party has 100 13 exemptions into our ERA systems." What exemptions are 14 being discussed here? 15 A. What's happening here is that the Stone Eagle 16 interface process has been around for a long time. It 17 probably dates before my time at Reynolds. And where 18 they have a bypass around the security changes, and 19 this is not desirable. It's a hangover. It's a 20 cleanup. And what's happening is Tommy Barras is 21 telling me, look, it's worse than just the current 22 Stone Eagle stuff. There's a bunch of others with 23 exceptions laying around out there. 24 At this point we are getting more focused on -- 25 we actually have reports now that list every kind of</p>
<p style="text-align: right;">191</p> <p>1 pull that was happening here, we looked like everything 2 was just fine, but it turns out, out of the month there 3 were six deals that didn't happen, which impact the 4 numbers on the reports. 5 And so we've got to do -- this one is called 6 Deal Reversal Notification. And it was one more thing 7 we had to do before we could finally get them to move 8 forward and completely get off the old interface and 9 get onto RCI. 10 Q. In the footnote -- or I shouldn't say in the 11 footnote. There's a sentence in the e-mail in the 12 middle of the first page of CX 4420 that says, "As a 13 footnote, we've received the latest enhancements for 14 Stone Eagle that allow us to replace the Stone Eagle 15 hostile interface." In what way was Stone Eagle a 16 hostile interface? 17 A. That is a misnomer. It's not a hostile 18 interface. It's like a hostile interface because its 19 bandit is different, but it was not hostile in the fact 20 that we definitely knew about it and condoned it, 21 probably were even selling it as a service and charged 22 them for it. But again, it was an obsolete interface. 23 It was less secure, and we wanted to move to RCI. 24 Q. How was it less secure? 25 A. I don't know the details. I just know that it</p>	<p style="text-align: right;">193</p> <p>1 exception that's in place. And we give these 2 exceptions or are really forced to give them from major 3 customers. For instance, here they are talking about 4 Heritage is a very big customer, Crain, DARCARS is 5 right here in D.C., and evidently we have some manner 6 of exception for those folks where they are not on RCI. 7 They are on something else that predates RCI. 8 This is another example of the situation where 9 we have power to block things, but there's also a cost. 10 The cost is customer relations with major accounts. 11 Q. Right. I mean, if you block them, they would 12 possibly move to a different DMS system? 13 A. The noise would precede anything like that. 14 Q. What noise? 15 A. The customer just calling up and wearing 16 everybody out. 17 Q. In the second sentence of the e-mail on the 18 very top of the first page of the exhibit, it says, 19 DSV, I think it's supposed to be "has" been talking 20 about moving for years now. No end in sight. What's 21 DSV? 22 A. Data services, I believe, is what that stands 23 for. 24 Q. So this is a department within Reynolds? 25 A. Yeah, that reports to Bob Schaefer. And what's</p>

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1 happening is, and as Mr. Barras is being very pointed
2 in his needling over the situation and quite properly
3 so, the amount of things that we've had to clean up
4 inside Reynolds has been huge. And we've aggressively
5 worked at that, but it's still not done yet.

6 BY MR. LANNING:

7 **Q. Mr. Brockman, talking about this idea of**
8 **exemptions, were you in the habit or in the practice at**
9 **Reynolds to give exemptions to certain customers that**
10 **were using what you call hackers?**

11 A. Yes. And these would be large customers.
12 Frankly, in a lot of cases pretty sophisticated folks.

13 **Q. Like Hendrick?**

14 A. Like Hendrick and Penske, you know, very, very
15 large folks that have quite capable IT staffs on their
16 own separate from the work we do for them.

17 These are not lightly handed out. I mean,
18 particularly for an exemption for a very big customer,
19 they got to come to me and I got to weigh the sales
20 issues. In accounts like this, there's some folks that
21 are just kind of obstinate, and other folks, their
22 excuse is, well, they are really busy. And there's
23 other folks that are the delay kind of folks: Well,
24 yeah, we'll do that but we're really busy right now.
25 We'll talk about it next summer and get it done that we

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1 **Q. Mr. Brockman, I would like to direct your**
2 **attention to something we were talking about earlier**
3 **today, which is if you go down near the bottom of the**
4 **page where the little letter C is and it says,**
5 **"Communication plan and marketing announcement" under**
6 **number 4, do you see that?**

7 A. Yes.

8 **Q. And I believe when we talked about this earlier**
9 **today, we were talking about the sentence that says,**
10 **"How will the agreement be announced to the market --**
11 **they need to get this identified and understood quickly**
12 **due to the CDK global announcement."**

13 A. Yes.

14 **Q. Do you see that?**

15 A. Um-hum.

16 **Q. I believe it was your testimony, of course we**
17 **can go back and read it, but you were saying that this**
18 **was CDK's issue about the marketing and the**
19 **communication; is that correct?**

20 A. Yes.

21 **Q. And my question to you, then, is what was CDK's**
22 **concern about getting an agreement where you were going**
23 **to either manage jointly a communication to the**
24 **marketplace or that you were going to at least review**
25 **this?**

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1 constantly have to follow up on. Now we actually
2 review our lists of exemptions now, which makes it a
3 lot easier. Before we had to do a lot of legwork to
4 figure out who was doing what.

5 **Q. So in essence, you're saying that for the large**
6 **customers that might have those types of exemptions,**
7 **they have to be approved by you?**

8 A. Yeah. And the number is steadily falling,
9 especially now that we've got a list.

10 **Q. Would Mr. Schaefer make recommendations to you**
11 **about whether or not an exemption for a large customer**
12 **should be given?**

13 A. Yes. I wouldn't necessarily follow that up. I
14 would talk to Keith Hill.

15 **Q. I'm going to just ask you to go back to**
16 **CX 4037.**

17 MR. COHEN: Bill, could you just tell me what
18 that was or where it was.

19 MR. LANNING: That's the September 11, 2014
20 from Robert Schaefer to Bob. It's the one-pager.

21 MR. COHEN: Okay. Do you know how long ago you
22 guys used it?

23 MR. LANNING: It was this morning.

24 MR. COHEN: Thank you.

25 BY MR. LANNING:

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1 A. Well, I think the issue is that they wanted to
2 do what they wanted to do. They would much prefer to
3 actually have us agree to what they wanted to do, but I
4 believe in the end we did not agree. In this case
5 here, they went ahead and did it or were going to do it
6 anyway.

7 **Q. But was there an expression of what their**
8 **concern was about having this in relation to their**
9 **announcement of going public?**

10 A. Not that I recall. There probably was, but I
11 wasn't sensitive enough to remember.

12 **Q. And was it related in any way about a concern**
13 **that Reynolds might make an announcement about the**
14 **agreement that CDK didn't like?**

15 A. Well, I think probably that was part of it
16 because if we made the announcement the way we would
17 like, it would be very, very damaging to them.
18 Truthful, but it would be damaging.

19 **Q. What do you mean? What would this statement**
20 **say that might be truthful and damaging to them?**

21 A. Well, the truthful statement would be that they
22 had been hacking into our systems for many years and
23 quite a large number of systems. And I'm sure that
24 would have caused telephones to ring at CDK with
25 customers calling, was I one of the ones, that sort of

<p style="text-align: right;">198</p> <p>1 thing.</p> <p>2 Q. Was there also an element to it that Reynolds</p> <p>3 might take the tack competitively that we were right</p> <p>4 all along on security and now that you are joining us?</p> <p>5 A. I don't know what they were thinking about, but</p> <p>6 that's one of the things they could have been thinking</p> <p>7 about.</p> <p>8 Q. So did you discuss this with Mr. Schaefer?</p> <p>9 A. Not that I recall.</p> <p>10 Q. Was there any discussion that CDK did not in</p> <p>11 advance of its going public want to announce that they</p> <p>12 were changing their position on being open or closed?</p> <p>13 A. Again, I'm not aware of anything like that.</p> <p>14 Q. I have just two more questions on another</p> <p>15 document, which is CX 4273.</p> <p>16 MR. COHEN: Would you mind telling us what that</p> <p>17 is again?</p> <p>18 MR. LANNING: The SIS settlement.</p> <p>19 BY MR. LANNING:</p> <p>20 Q. Could you please turn to CX 4273-003 and go</p> <p>21 down to V, section V or numeral 5 that starts with the</p> <p>22 exception of the wind down period for SIS. Do you see</p> <p>23 that?</p> <p>24 A. Yes.</p> <p>25 Q. I just had one question here. If you go to the</p>	<p style="text-align: right;">200</p> <p>1 to clarify any testimony that you have given over the</p> <p>2 past two days. Do you have any clarifications to make?</p> <p>3 THE WITNESS: No.</p> <p>4 MR. ABRAHAMSEN: Then we will adjourn today's</p> <p>5 session. We will keep the record open. And everybody</p> <p>6 can go to lunch.</p> <p>7 (Whereupon, the proceedings at 1:08 p.m., were</p> <p>8 adjourned.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">199</p> <p>1 sentence that's about midway down, and it says, "For</p> <p>2 the avoidance of doubt, the covenants set forth in this</p> <p>3 paragraph 3(a)(v) are not intended as a covenant not to</p> <p>4 compete." Do you see those?</p> <p>5 A. Yes.</p> <p>6 Q. I guess I'm curious, why was this put in the</p> <p>7 SIS agreement?</p> <p>8 A. Well, I would like to be helpful, but frankly,</p> <p>9 I don't know because I wasn't part of the crafting of</p> <p>10 these documents. And just looking at it today, it</p> <p>11 looks to me like it was -- an attorney wanted to put in</p> <p>12 some sort of blanket statement.</p> <p>13 Q. Were you competing with SIS at this time?</p> <p>14 A. SIS is a data extractor where they in bandit</p> <p>15 mode go into a system. We don't do that. We've never</p> <p>16 done that and therefore, we don't compete with them.</p> <p>17 They have that market all to themselves.</p> <p>18 Q. That's why I was curious about why the language</p> <p>19 was in there. If you are not competing with them, why</p> <p>20 are you concerned about it being construed as a</p> <p>21 covenant not to compete?</p> <p>22 A. I have no idea.</p> <p>23 MR. LANNING: Thank you very much. That's it</p> <p>24 for me.</p> <p>25 MR. COHEN: Mr. Brockman, you do have a right</p>	<p style="text-align: right;">201</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2</p> <p>3</p> <p>4 I, Deborah Wehr, do hereby certify that the</p> <p>5 foregoing proceedings were taken by me in stenotype and</p> <p>6 thereafter reduced to typewriting under my supervision;</p> <p>7 that I am neither counsel for, related to, nor employed</p> <p>8 by any of the parties to the action in which these</p> <p>9 proceedings were taken; and further, that I am not a</p> <p>10 relative or employee of any attorney or counsel</p> <p>11 employed by the parties hereto, nor financially or</p> <p>12 otherwise interested in the outcome of the action.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17 Deborah Wehr, RPR</p> <p>18 Notary Public</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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